

In the Matter of ALLIED LABORATORIES INC. (PITMAN-MOORE DIVISION)
and AMERICAN FEDERATION OF LABOR

Case No. 9-R-1585

SUPPLEMENTAL DECISION

AND

ORDER

March 15, 1945

On January 8, 1945, the Board issued a Decision and Order in the above-entitled proceeding.¹ Thereafter, by letter dated January 10, the A. F. L. requested reconsideration of said Decision.² On February 3, the Company filed with the Board a brief in opposition thereto.

The Board relied in its Decision upon the facts that, in 1940, it had established a 2-plant unit, largely based upon the desires of the employees themselves, and that there was a 4-year history of collective bargaining by the Independent predicated upon that unit. It was noted that, lately, certain employees of the Zionsville plant evinced interest in the A. F. L. Although the Decision did not expressly so state, the Board took cognizance of the fact that, while the employees of that plant recently manifested an attitude of indifference to the Independent, that organization concededly represents the employees of the Indianapolis plant,³ and has been and is ready to bargain collectively for all employees in the established unit. Under the circumstances I perceive no reason to change our previous determination, and the A. F. L.'s request for reconsideration is denied.⁴

ORDER

IT IS HEREBY ORDERED that the request of the American Federation of Labor for reconsideration of the Decision and Order issued in this proceeding on January 8, 1945, be, and it hereby is, denied.

¹ 59 N. L. R. B. 1501

² Matters in support of this request were subsequently submitted to the Board by letters from the A. F. L. dated January 22 and 26, 1945

³ The larger of the two plants in question

⁴ See *Matter of Potlatch Forest, Inc.*, 51 N. L. R. B. 288, *Matter of Raymer, Inc.*, 52 N. L. R. B. 1268, *Matter of Bethlehem-Fairfield Shipyard, Incorporated*, 58 N. L. R. B. 579, *Matter of P. Lorillard Company, Louisville Plant*, 58 N. L. R. B. 1112.

MR. GERARD D. REILLY, concurring:

In view of the forceful dissent of my colleague Mr. Houston, I feel impelled to make some additional observations. Reduced to its essence, his view seems to be that since the original Direction of Election in this case provided for a separate tally of votes in each of the plants, the Board thus conceded that each plant might constitute an appropriate collective bargaining unit and, consequently, that the majority vote of the employees in each of the plants in favor of one single collective bargaining agent for a multi-plant unit should not be deemed an irrevocable decision.

If the case before us were one of original impression, a great deal could be said for this view. This Board, however, for a period of more than 5 years⁵ has followed the principle that once the employees had themselves, either by voluntary bargaining or by their votes, evinced a desire for a system-wide unit or a plant unit, a competing union would not in the future be permitted to obtain an election in a different unit. While our decisions have explained this doctrine in terms of promoting "industrial stability," I suppose that its real justification rests less upon such abstract theory as it does upon considerations of fundamental fairness, since it is contrary to our inherited conceptions of constitutional democracy to let a dissident faction secede from the organic structure which it helped to establish. It is true that we have made some exceptions to this principle, but these deviations from the general principle merely illustrate the general rule. Thus we have taken smaller groups out of a general bargaining unit where the smaller group was a cohesive craft which never was given an opportunity to express itself,⁶ or where reconversion had substantially altered the operations upon which the former bargaining unit was premised,⁷ or where the actual history of the enterprise made it clear that the industrial collective agent could not supply workers of the necessary skills.⁸ I would be inclined to apply these exceptions liberally in all cases in which the craft group seeking a separate referendum had been previously denied an opportunity to express its wishes before being assimilated into a larger industrial organism.

These situations are very different, however, from the question which this case presents, since—as we have noted—a separate referendum was taken here of the employees in each plant. If a change of sentiment in one plant now is a ground for letting it go its own way in a different bargaining unit, the encouragement which this Board

⁵ *Matter of The American Can Company*, 13 N. L. R. B. 1252

⁶ *Matter of Bendix Products Division of Bendix Aviation Corporation*, 39 N. L. R. B. 81; *Matter of Tampa Florida Brewery, Inc.*, 42 N. L. R. B. 642, *Matter of General Electric Company (Lynn-River Works and Everett Plant)*, 58 N. L. R. B. 57

⁷ *Matter of The Trailer Company of America*, 51 N. L. R. B. 1106

⁸ *Matter of Electro Metallurgical Company (Niagara Works)*, 58 N. L. R. B. 518, 1764
I have always regarded the failure of the Board to apply this principle in the *Sagamore* case (39 N. L. R. B. 909) as the principal vice of that decision

has given to system-wide bargaining and association-wide bargaining would be completely nullified. If we were to regard as controlling an apparent change of mind in one of the component units which has already voted itself into an integrated bargaining structure, the premise of our decisions, which for years has set the pattern of bargaining in the bituminous coal industry, the lumber industry, shipbuilding and the public utility field, would be fatally undermined.

MR. JOHN M. HOUSTON, dissenting:

Upon reconsideration, I am of the opinion that the purposes of the Act will best be served by directing an election among the Zionsville employees to redetermine whether they desire to be represented for collective bargaining purposes as a separate unit or as part of the established 2-plant unit.

The Board's original determination of the unit issue in 1940 recognized the fact that the employees at each plant might properly constitute separate units, or might, with propriety, be combined into a single unit; it rested its ultimate finding with respect to this issue largely upon the desires of the employees themselves.⁹ The facts in the instant case, detailed hereinafter, not only confirm the above conclusion of the Board that the employees at each plant might constitute separate appropriate collective bargaining units but also argue compellingly against irrevocably linking the employees of both plants.

After the bargaining unit was established in 1940, the Independent annually elected a president, filling his office alternately with employees from each plant. The employees at each plant thereupon elected a separate vice president, secretary, treasurer, executive committee and grievance committee to serve each plant separately.¹⁰ This state of affairs continued until December 1943. At that time, a meeting of the Zionsville employees was called for the purpose of holding their annual election of officers. No one appeared at this meeting, and no election took place.¹¹ Shortly thereafter, the person acting as treasurer for the Zionsville employees turned over to the Indianapolis treasury the funds in the Zionsville treasury. Since December 1943, no dues have been collected at Zionsville, no meetings have been held, and no business has been transacted by the Zionsville group except

⁹ The Board there stated: "The two plants might properly be considered either as two separate bargaining units or as a single unit. Under the circumstances, we will be guided by the desires of the employees themselves."

¹⁰ The record shows that single collective bargaining agreements have been entered into between the Company and the Independent covering the 2-plant unit.

¹¹ It appears that, at the December 1943 meeting of the employees of the Indianapolis plant, Ralph Jackson, a Zionsville employee, was elected president of the Independent and two other Zionsville employees were elected, respectively secretary and treasurer of the Zionsville plant, by the Indianapolis group. This was wholly contrary to the usual procedure. However, none of these three employees ever served in any capacity. It is apparent, too, that Jackson was not notified of his election at any time prior to September 2, 1944, the date of the filing of the petition herein by the A. F. L.

for one instance in February 1944, when a written "recommendation" was presented to the Company by the "executive committee" on behalf of a Zionsville employee. The signatories to this document are identified in the record as erstwhile active members in the Independent and may have been the executive committee holding over. Other than this incident, it does not appear that the Independent has, at the present time, any membership among the employees of the Zionsville plant.

It is significant that the plants comprising the established unit are 15 miles apart, have no appreciable employee interchange, and engage 335 employees in all classifications. Of these, about 175 are employed at the Indianapolis plant as production and maintenance employees, and approximately 115, a substantial portion of the established unit, are similarly designated employees engaged at the Zionsville plant.¹² Obviously, therefore, the withdrawal from the Independent by virtually all the Zionsville employees and the attendant lack of interest in that organization at Zionsville have made it impossible for the Independent to bargain effectively for them. And it is not sufficient answer to assert, as does my colleague, Dr. Millis, or to imply, as does my colleague, Mr. Reilly, that the Independent "concededly represents the employees at the Indianapolis plant and has been and is ready to bargain collectively for all employees in the established unit."¹³ Indeed, just as long as a majority of the Zionsville employees seek representation by the A. F. L.¹⁴ or by any other labor organization in a separate unit, and oppose the Independent or the union which represents the majority of the employees at the Indianapolis plant, effective collective bargaining on a 2-plant basis will be foreclosed. A denial of an investigation of representatives, under such circumstances, overlooks our paramount interest in industrial stability.¹⁵

Accordingly, since the Zionsville employees may constitute an appropriate unit, since the original determination of the established unit

¹² The established unit is comprised of these categories of employees.

¹³ I infer that, were the Independent defunct at both plants, my colleague, Mr. Reilly, would not oppose an election in the Zionsville plant alone.

¹⁴ In our original Decision and Order, we indicated that 65 of the employees in the Zionsville plant executed A F L designations.

¹⁵ I am unable to agree with Mr. Reilly's contention that my decision impinges upon the principles laid down by the Board in the *American Can Company* case. We are not here concerned with any craft unit problem. The factual context is one involving a 2-plant or multi-plant unit wherein collective bargaining is at a standstill for all employees at one of the plants, comprising a substantial proportion of the employees of the 2-plant unit, due to the virtual defunctness in that plant of the bargaining representative selected about 4 years ago. Industrial stability or considerations of "fundamental fairness" are not served by treating such employees as a "dissident faction [seceding] from the organic structure which [they] helped to establish," a characterization with which I do not agree, and by insisting upon the maintenance of the *status quo*. Nor do I view this case, when confined to the facts, as having consequences inimical to established system-wide or association-wide bargaining patterns. The problem posed here not only invites but requires solution, and the only approach thereto is the one invoking the Board's democratic election procedures.

was largely bottomed upon an expression of choice by the employees at each of the two plants, and inasmuch as the Zionsville employees, who comprise a substantial portion of the established unit, are not being effectively bargained for by the Independent, and have evinced a preference for representation as a separate unit, I am of the opinion that neither the prior establishment of the 2-plant unit, nor the previous existence of written contracts covering the established unit is conclusive with respect to whether the Zionsville plant may constitute a separate unit or be bargained for as part of a 2-plant unit.¹⁶ An expression of choice should be permitted at the Zionsville plant at this time.

¹⁶ See *Matter of Westinghouse Electric & Manufacturing Company*, 53 N. L. R. B. 1073. Cf. *Matter of Libbey-Owens Ford Glass Co.*, 31 N. L. R. B. 243.