In the Matter of HENRY GOLDBERG AND HARRY C. MARCUS, PARTNERS, D/B/A CENTRAL OPTICAL COMPANY, ET AL., EMPLOYERS AND PETITIONERS *and* OPTICAL WORKERS UNION NO. 18820, A. F. L., UNION

In the Matter of BEITLER-MCKEE OPTICAL COMPANY, EMPLOYER *and* OPTICAL WORKERS UNION NO. 18820, A. F. L., PETITIONER

In the Matter of HENRY GOLDBERG AND HARRY C. MARCUS, PARTNERS, D/B/A CENTRAL OPTICAL COMPANY, EMPLOYER *and* OPTICAL WORKERS UNION NO. 18820, A. F. L., PETITIONER

In the Matter of PRECISION OPTICAL COMPANY, EMPLOYER *and* OPTICAL WORKERS UNION NO. 18820, A. F. L., PETITIONER

In the Matter of RALPH R. GRODSTEIN AND LOUIS TUCKER, PARTNERS, D/B/A TRIANGLE OPTICAL COMPANY, EMPLOYER *and* OPTICAL WORKERS UNION NO. 18820, A. F. L., PETITIONER

In the Matter of WHITE-HAINES OPTICAL COMPANY, EMPLOYER *and* OPTICAL WORKERS UNION NO. 18820, A. F. L., PETITIONER

Cases Nos. 6-RM-41, 6-RC-457, 6-RC-458, 6-RC-459, 6-RC-460, and 6-RC-461.—Decided January 31, 1950

DECISION

AND

DIRECTION OF ELECTIONS

Upon separate petitions duly filed, a consolidated hearing was held in these cases before Erwin Lerten, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Herzog and Members Houston and Murdock].

Upon the entire record in this case, the Board finds:

1. The Employers, hereinafter referred to respectively as Central, Beitler-McKee, Precision, Triangle, and White-Haines, are engaged in commerce within the meaning of the National Labor Relations Act.

2. The labor organization involved claims to represent certain employees of the Employers.

3. Questions affecting commerce exist concerning the representation of employees of the Employers within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The appropriate units:

These cases arise out of a dispute between the five Employers, on the one side, and the Union, on the other, concerning the unit, or units appropriate for the laboratory employees employed by each of the Employers. The Employers contend that a single, multiemployer, unit is appropriate for all their laboratory employees; the Union contends that the laboratory employees of the five Employers should be established in five separate units.[1]

The five Employers are each engaged in Pittsburgh, Pennsylvania, in the manufacturing, the distributing, and the wholesaling of optical lenses and products.[2] They are separate business entities, in no way connected organizationally. The operations of all the Employers, however, are alike. The laboratory employees of each perform work of a similar nature, that is, the surfacing and the finishing of their Employer's products.[3] No interchange of laboratory employees among the several Employers has been effected in the past, and the record does not show that any is presently contemplated.

The Union has represented the laboratory employees of each of the Employers for varying periods of time; in each instance the bargaining relationship originated, and continued for sometime thereafter, on a single-employer basis. The Union was voluntarily recognized by Triangle and by Beitler-McKee in 1934, by Central and by White-Haines in 1938, and by Precision in 1940; and from those respective dates until 1947, each Employer negotiated with the Union separately and signed separate bargaining agreements.[4]

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[1] At the hearing, the parties stipulated that "wash-up" employees who perform other laboratory operations should be included in the unit, or units; and that "wash-up" employees who perform no other laboratory operations, but who perform work in another department, should be excluded. As the parties also stipulated that there was "no prospect in the foreseeable future" that any of the Employers would employ employees who would perform "wash-up" work exclusively, and as the record shows that no such employees were engaged by any of the Employers at the time of the hearing, the unit placement of employees in such a category is academic, and requires no decision.

[2] In addition to the five Employers, there are three other firms, the American Optical Company, the B. K. Elliott Company, and Steel City Optical Company which are presently engaged in the wholesale optical business in Pittsburgh. The Union currently represents the laboratory employees of each of these firms in separate units.

[3] Each of the Employers has a similar apprentice program for its laboratory personnel, with employees becoming journeymen-technicians after a 5-year apprenticeship.

[4] In January 1941, the Union invited the Pittsburgh optical firms to a round-table discussion "on problems of mutual interest"; in October 1941, the Union called another round-table discussion on "an uniform wage scale." These meetings were called by the Union in an effort to establish a uniform wage scale for apprentices, and thereby meet the competition of war-time projects which were taking workers from the optical industry. At least two of the Employers herein involved, Precision and Beitler-McKee, thereafter signed individual contracts with the Union for 1941–1942, which included both an apprentice scale and a percentage increase for journeymen that had been proposed by the Union at the 1941 meeting.

In April 1947, because of "numerous requests made by the Employers," the Union called a meeting of all the wholesale optical firms in Pittsburgh to discuss working conditions and wage rates. At the meeting, the Union distributed a form contract that it had prepared. After the meeting, three of the Employers, Triangle, Central, and Beitler-McKee, retained the same attorney to negotiate their bargaining contracts with the Union. Negotiations between the attorney and the Union followed on an individual company basis, with substantial agreement on the terms of a contract for one of the three companies being achieved before discussion was directed to the terms of a contract for another. On the same day in July 1947, the Union and the three Employers signed individual contracts which contained substantially the same provisions.

In the spring of 1948, the Union met with Triangle to negotiate a new bargaining contract. Negotiations, however, reached an impasse, and were broken off. Thereafter, in April 1948, Triangle, and the four other Employers herein involved, retained Wilder-Feldman, Inc., a firm of labor relations consultants, to represent all of them in negotiations with the Union.[5] Contract negotiations followed between Wilder-Feldman, acting on behalf of all the Employers, and the Union;[6] these negotiations continued despite the fact that during July the employees of Triangle, White-Haines, Central, and Beitler-McKee went on strike.

In September 1948, during the absence from Pittsburgh of the representatives of Wilder-Feldman, the strikes were ended when an undated document in the form of a "memorandum" agreement was signed by the Union and, on behalf of all the Employers, by a partner in Central and by the president of Precision. The "memorandum" agreement contained the substantive provisions of a bargaining contract, but did not name any of the Employers. It included a clause providing for the adjustment of "individual inequities," by which the parties intended to bring about an industry-wide alignment of the earnings of individual employees on the basis of their skills and length of service. The contemplated alignment was accomplished by means of separate conferences between the Union and each Employer. Ultimately, separate contracts were executed by the five Employers, each

[5] In delegating authority to Wilder-Feldman, the Employers agreed among themselves that the majority vote of the Employers with respect to the provisions of a bargaining agreement would be binding on each. This majority-principle was in fact applied during the 1948 dealings with the Union, when certain contract provisions were accepted by individual Employers that had voted against them at previously held caucuses. Before beginning the 1949 negotiations, the Employers agreed to be bound by the same principle.

[6] In May and June 1948, upon separate petitions filed by the Union, individual union-shop authorization elections were held for the laboratory employees of each Employer. These elections were accomplished with the consent of the individual Employers concerned, given through Wilder-Feldman. In each instance a union-shop was authorized.

of which contained all the provisions of the September "memorandum" agreement, as well as a schedule setting forth wage rates for the individual employees of the respective Employers.[7] All contracts had a common termination date.

During the life of these latter contracts, the Union processed two grievances. Each grievance was discussed only with the individual Employer concerned. However, the Union's position with respect to one of them rested in part on what it considered to be the best interests of its members "in other shops."

In September 1949, Wilder-Feldman and the Union began negotiations for the renewal of the Employers' contracts. The negotiations were broken off, however, after two meetings, when it became apparent that the Employers were prepared to negotiate only on a multiemployer basis, and the Union insisted on negotiating a contract for each Employer individually.

We hold, on the facts before us, that separate units of the laboratory employees of each Employer constitute appropriate bargaining units. The collective bargaining history, which we here regard to be the controlling factor, shows that bargaining for the employees here involved has existed for many years on a single-company basis—in two instances for periods as long as 14 years—and that, by contrast, bargaining on a multiemployer basis has existed for the relatively short period of but 1 year. Under the circumstances, we believe that the bargaining on a multiemployer basis is of insufficient duration to have fixed the bargaining unit.[8]

Accordingly, we find that the following constitute appropriate units for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

1. All laboratory employees employed by Central Optical Company at its Pittsburgh, Pennsylvania, shop, including "wash-up" employees performing laboratory operations, but excluding supervisors as defined in the Act.

2. All laboratory employees employed by Beitler-McKee Optical Company at its Pittsburgh, Pennsylvania, shop, including "wash-up" employees performing laboratory operations, but excluding supervisors as defined in the Act.

3. All laboratory employees employed by Precision Optical Company at its Pittsburgh, Pennsylvania, shop, including "wash-up" em-

[7] In addition to the hourly rates specified in its contract, Precision also operates under a system of incentive, or bonus, payments to its employees. None of the other Employers has a similar plan.

[8] Cf. *Texas & Pacific Motor Transport Co.*, 77 NLRB 87; *Koppers Company, Inc.*, 81 NLRB 1186.

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ployees performing laboratory operations, but excluding supervisors as defined in the Act.

4. All laboratory employees employed by Triangle Optical Company at its Pittsburgh, Pennsylvania, shop, including "wash-up" employees performing laboratory operations, but excluding supervisors as defined in the Act.

5. All laboratory employees employed by White-Haines Optical Company at its Pittsburgh, Pennsylvania, shop, including "wash-up" employees performing laboratory operations, but excluding supervisors as defined in the Act.

DIRECTION OF ELECTIONS

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employers herein, separate elections by secret ballot shall be conducted as early as possible, but not later than 30 days from the date of this Direction, under the direction and supervision of the Regional Director for the Region in which this case was heard, and subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations, among the employees in each of the units found appropriate in paragraph numbered 4, above, who were employed during the payroll period immediately preceding the date of this Direction of Elections, including employees who did not work during said payroll period because they were ill or on vacation or temporarily laid off, but excluding those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the elections, and also excluding employees on strike who are not entitled to reinstatement, to determine whether or not they desire to be represented, for purposes of collective bargaining, by Optical Workers Union No. 18820, A. F. L.