

the parties a supplemental tally of ballots, including thereon the count of the ballots described above.

MEMBERS MURDOCK and STYLES took no part in the above Supplemental Decision and Direction.

THE MANUFACTURERS' PROTECTIVE & DEVELOPMENT ASSN. (CONSOLIDATED IRON-STEEL MANUFACTURING COMPANY, TAYLOR AND BOGGIS DIVISION)¹ and INTERNATIONAL MOLDERS & FOUNDRY WORKERS UNION OF NORTH AMERICA, AFL, PETITIONER

THE MANUFACTURERS' PROTECTIVE & DEVELOPMENT ASSN. (BORROUGHS MANUFACTURING COMPANY) and INTERNATIONAL MOLDERS & FOUNDRY WORKERS UNION OF NORTH AMERICA, AFL, PETITIONER.
Cases Nos. 9-UA-1727 and 9-UA-1797. August 13, 1951.

Decision and Direction of Elections

Upon petitions duly filed under Section 9 (e) (1) of the Act, a consolidated hearing was held before Seymour Goldstein, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in the case, the Board finds as follows:

1. The Manufacturers' Protective & Development Assn., herein called the Association, is engaged in commerce within the meaning of the Act.

2. The Petitioner is the currently recognized collective bargaining representative of the employees claimed in the petitions to constitute units appropriate for the purposes of authorizing the Petitioner to make union-security agreements.

3. The Petitioner has made an appropriate allegation and showing that 30 percent or more of the employees in each of the claimed units desire to authorize the Petitioner to make an agreement requiring membership in the Petitioner as a condition of employment.

4. The appropriate units:

The Petitioner petitions for a union-security authorization election among the employees of Consolidated Iron-Steel Manufacturing Company, Taylor and Boggis Division, herein called Taylor, and a similar election among the employees of Borroughs Manufacturing Company, herein called Borroughs. However, all parties requested dismissal of the petitions on the ground that Taylor and Borroughs have each joined the Association, that the employees of the Association's mem-

¹ The Employer's name appears as amended at the hearing.

bers constitute the appropriate collective bargaining unit herein, that such employees have previously authorized the Petitioner to make a union-security agreement, and that any further authorization elections are therefore unnecessary.

The Association is, and for many years has been, the collective bargaining representative of its members, currently consisting of about 34 companies producing cooking and heating appliances. As the representative of its members, the Association has recognized and contracted with the Union for the production and maintenance employees of its constituent companies since about 1891. The resultant contracts are called "Conference Agreements." There are now about 6,000 employees covered by these agreements.

Pursuant to consent agreement, the Board conducted a union-security authorization election in June 1948 among the production and maintenance employees of the Association's *then* current membership.² Certification of the requisite authorization, and a union-shop contract, followed.

The current contract, continuing the union shop, was executed on January 1, 1951, to run for a year, with automatic annual renewals. Its coverage was defined in article I, clause 1, in substance as all production and maintenance employees of the "members of the Association." It contains no express provisions relating to new association members joining after January 1, 1951.³ The undisputed testimony of the Association's secretary discloses, and we find, that when a new company joins the Association, the Union first submits to the Association a certified list of its membership in that company, and if the list shows that a majority of the company's employees are members of the Union in good standing the Association immediately considers the new company as covered by the Agreement.

Taylor joined the Association in May 1950. It has recognized the Union for about 30 years, and there are no conflicting claims.

Borroughs joined the Association at the same time as the current contract was executed on January 1, 1951, according to the undisputed

² The unit was "all employees in all such departments in the plants of the employer-members of the Association (as shown on the agreed payroll lists for each plant attached to the petition)," with appropriate exclusions. There was no evidence that any "departments" were not included.

³ The contract expressly excludes employees covered by contracts with other unions, and also "the employees in any department in the plants of the members wherein the department has not previously been covered by Conference Agreements." The evidence indicates, however, that there are no such employees.

Clause (b) goes on to provide for the merger into the unit of a previously excluded department (not Company), as follows:

In the event a majority of the employees in any department not previously covered by a Conference Agreement desire the Union as their collective bargaining agent and the Union submits to the Association a certified list of the employees in the department desiring the Union as their bargaining agent, the employees in such department shall be included henceforth in the bargaining unit and covered by the Conference Agreements.

testimony. It recognizes the Union as the exclusive representative of its employees as the result of certification in December 1950.

The record in this case discloses that there has been a long history of collective bargaining with the Petitioner by the Association for its members, excluding Taylor and Borroughs. However, the bargaining history with respect to the latter two employers on an Association-wide basis has been exceedingly brief. Taylor's history has been one of 30 years of individual employer bargaining and a year of Association-wide bargaining. Borroughs has bargained with the Petitioner on a separate employer basis for less than a year and has been a member of the Association for a much shorter period of time. Past Board decisions make it clear that where, as here, there has been a very limited history of bargaining on a multiple-employer basis, if representation petitions were filed by a union seeking separate elections for the employees of Taylor and Borroughs, we would find single-employer voting groups appropriate and conduct the requested elections.⁴ We are unaware of any valid reason for departing from these Board precedents because the instant case involves a union-security authorization election rather than a representation proceeding. On the contrary, we believe that wherever feasible the same principles should be applied to both types of proceedings.⁵ Accordingly, we shall direct separate union-security authorization elections for the employees of Taylor and Borroughs.⁶

Our dissenting colleagues assert that by so doing we are giving these employees preferred treatment. We disagree. The short answer to this assertion is that all employees of the other members of the Association have been given an opportunity to vote on the question of union security whereas the employees of Taylor and Borroughs have not. Rather than giving the employees of Taylor and Borroughs preferential treatment, it seems to us that the course which the dissent suggests would give such preference to the employees of the other Association members, who would be in the position of having decided for

⁴ *West Tacoma Newsprint Co., and Cellulose Engineers, Inc.*, 81 NLRB 961; see also *Jerry Fairbanks, Inc.*, 93 NLRB 898; *Central Optical Company, et al.*, 88 NLRB 416; *Norcal Packing Company*, 76 NLRB 254.

⁵ See *Furniture Firms of Duluth*, 81 NLRB 1318.

⁶ We disagree with our dissenting colleagues that the employees of Taylor and Borroughs should be considered as accretions to the established unit. One of the principal characteristics of an accretion is that the employee involved could not constitute a separate unit. However, the Board has always held that the employees of an individual employer are separately appropriate. Moreover, the untenability of the minority opinion's position can be graphically illustrated by considering what the situation in the instant case would be if the positions of the parties were reversed. Thus, if Taylor and Borroughs had the long history of bargaining on an Association-wide basis and the bargaining history of the other employers was principally on an individual employer basis, consistency with the dissenting view would seem to require a finding that although the other Employers' employees constituted a majority, they should not be granted separate elections because they were accretions to the much smaller Association-wide unit. This is a result which we do not believe our dissenting colleagues would desire to reach.

the employees of Taylor and Borroughs that they are subject to a compulsory union-security arrangement without the safeguard of an election under Section 9 (e) (1). In our opinion the employees of Taylor and Borroughs should be afforded the opportunity to express their desires with regard to the issue of union security.⁷

The Petitioner made it clear that it thought the earlier association-wide union-authorization election, conducted before Taylor and Borroughs joined the Association, made it unnecessary to file the present petitions. However, we do not construe this statement as a meritorious request for the withdrawal of the petitions.

Accordingly, we find that the units appropriate for the purposes of elections under Section 9 (e) (1) of the Act consist of all production and maintenance employees of Taylor and Borroughs, respectively, excluding clerical and sales employees, watchmen, guards, professional employees, and supervisors as defined in the Act.

[Text of Direction of Elections omitted from publication in this volume.]

CHAIRMAN HERZOG and MEMBER MURDOCK, dissenting:

We cannot agree with our colleagues that elections should be ordered in this case. It is undisputed that the appropriate collective bargaining unit is the association-wide unit, consisting of the employees of all the companies belonging to the Association. In June 1948 these employees voted at an appropriate election to authorize the Petitioner to make a union-security agreement. The employees of any one of the approximately 30 individual companies then belonging to the Association may have voted to deny the Petitioner such authorization. But such a vote would have been of no significance, as we believe the Board majority would agree, because of the contrary desires of a majority of the employees *within the broader appropriate unit*. It is not clear to us why the employees of Taylor, and those of Borroughs, should now be considered as anything other than accretions to the established unit, or why they should be accorded preferred treatment

⁷ We do not agree with our dissenting colleagues that either the *Waterous Company* case, 92 NLRB 76, or the *Douglas Aircraft Company, Inc.*, case, 92 NLRB 702, is an applicable precedent for the Board's decision in the instant case. While it is true that in the *Waterous* case a separate election was not granted for a previously unrepresented group of employees the Petitioner in that case was seeking an election in the entire broader appropriate unit and such an election was held. The dissenting opinion in this case would not hold any election. In our opinion the situation in the present case is more closely analogous to that in the *Great Lakes Pipe Line Company* case, 92 NLRB 583, where the petitioner sought to add an unrepresented group of employees to its existing broader unit and the Board conducted an election for those employees. With respect to the *Douglas* case, we believe, that it is clearly distinguishable from the instant case. The basis for the Board's failure to hold an election in that case was that the petitioner sought decertification of a group of planners who were not the only technical employees represented by the union. No such issue is involved here.

and allowed to defeat the application to them of the union security already authorized by a majority in the unit.

We agree with the general proposition stated by the majority that Congress intended that a union shop could not be lawfully imposed on employees until they had first properly authorized it by secret ballot. But here such a secret ballot *was* taken in June 1948. If the Board's long-established and congressionally approved doctrine of the appropriateness of employer-association units is to continue, we see no way to avoid the conclusion that a union shop has already been approved by the June 1948 election. We believe it to be a sufficient safeguard, wholly in accord with the intent of Congress, for the Board to determine, as it does here, that the employees in question have become an integral part of the established unit.⁸ We further believe the Board should avoid splintering a special segment off from the appropriate unit, with the possible result of allowing the employees in that segment to defeat the union-security arrangement desired by the majority and obtaining the benefits of union representation without sharing the cost.

The Board majority seems to us to substitute semantics for precedent in reaching a solution of this case. Although they do cite cases, their citations are either wholly inapplicable, or support our view rather than theirs. For example, the cases cited in footnote 4 direct an election among a group of employees to assist the Board in determining whether they should be included in or excluded from the appropriate bargaining unit;⁹ and the case cited in footnote 5 holds that, once the unit appropriate for the purpose of collective bargaining is conclusively determined, the *same* unit is normally also appropriate for the purpose of union security. These cases exemplify general principles, and we concur in them no less wholeheartedly than the majority. But to us they prove that, on the facts in *this* case, the petitions should be dismissed because they involve units which are *not* appropriate for the purposes of collective bargaining or union security. Thus, the appropriate unit here is conceded by all parties to be Association-wide, and it includes the employees of Taylor and Borroughs at the present time. Moreover, the Petitioner is already

⁸ See *Waterous Company*, 92 NLRB 76, where the Board (with a dissent) rejected a contention that a new group should first be given a separate election before being merged into the established appropriate unit, and instead directed an over-all election in the enlarged unit, although the new group was thereby unable to give effect to its own desires as to collective bargaining representation. See also *Douglas Aircraft Company, Inc.*, 92 NLRB 702, where the Board denied a similar new group a separate decertification election, although from the beginning they had resisted being taken into the established appropriate unit.

⁹ To the same effect is the *Great Lakes* case cited in footnote 7. The other two cases there cited, *Waterous* and *Douglas*, refuse to direct a separate self-determination election among the small group of employees when the Board is satisfied, in the circumstances of a particular case, that *only* the more comprehensive unit is appropriate. That is the situation here.

authorized to make a union-security agreement covering this unit, within the meaning of Section 8 (a) (3). We note that the Board would be faced with a completely different question if the employees of Taylor and Borroughs had filed decertification petitions under Section 9 (c) (1) (A) (ii), or deauthorization petitions under Section 9 (e) (2).

Because the Board determines the appropriate unit on the particular facts "in each case," as Section 9 (b) requires, we emphatically disagree with our colleagues' so-called graphic illustration of the alleged error of our view by pointing to a different set of circumstances. We agree that the assumed circumstances would change the whole character of the unit.

The majority makes one other assertion which should not remain unanswered. They argue that we would be giving preference to the employees of old Association members if Taylor and Borroughs employees were subjected to a union shop without a separate election. But that is merely a restatement of the common fact that *any* election, whether political or otherwise, binds not only the losing voters but also the newcomers to the unit.

It follows that we would dismiss the petitions here, on the ground that Congress did not intend to require further authorization elections merely because an accretion took place in an existing union-shop unit.

ALLIED MATERIALS CORPORATION *and* INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO). *Case No. 7-CA-405. August 14, 1951*

Decision and Order

On May 11, 1951, Trial Examiner Louis Plost issued his Intermediate Reports in the above-entitled proceedings, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report.

The Board¹ has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the In-

¹ Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this proceeding to a three-member panel [Members Houston, Reynolds, and Styles].