ACRYVIN CORPORATION OF AMERICA *and* INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1614, Petitioner. Case No. 2-RC-6121. January 20, 1954

DECISION AND ORDER

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Aaron Weissman, 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 this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organizations involved claim to represent employees of the Employer.[1]

3. No question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act, for the following reasons:

The Petitioner seeks a unit of all production and maintenance employees of the Employer. The Employer and Intervenor contend that such a unit is inappropriate and that only a multiemployer production and maintenance unit is appropriate.

Prior to October 1, 1952, the Employer's employees were not represented for purposes of collective bargaining. On October 1, 1952, the Employer joined Plastic Products Manufacturers Association, Inc., an employer association which has engaged in collective bargaining with the Intervenor on behalf of its members since 1937 or 1938. In contracting to join the Association, the Employer agreed to be subject to and bound by all agreements of the Association that were in force at that time or that might be made thereafter. On the same date the Employer executed a separate "certificate of authorization and assumption" in which it ratified the agreement between the Association and the Intervenor running from August 4, 1950, to August 21, 1953, and agreed to be bound by any amendment or modification adopted and ratified by the Association and the Intervenor. On November 1, 1952, the Employer, the Intervenor, and the Association executed a further document ratifying the existing agreement between the Association and Intervenor and changing that agreement in certain respects in its application to the Employer. Most of the changes merely reflect the fact that the existing contract had been adopted by the Employer after 2 years of its 3-year term had expired. Since

[1] Plastic Button and Novelty Workers Union, Local 132, ILGWU, AFL, intervened on the basis of a current contractual interest.

joining the Association the Employer has been regularly represented at all its meetings.

On May 21, 1953, the Intervenor notified the Association of changes to be made in its agreement for the next 3 years. Thereafter the Association and the Intervenor negotiated a 3-year extension of the previous agreement with a number of modifications. After the respective memberships of the Intervenor and the Association, including the Employer, had ratified the extension agreement, a written extension agreement was executed by the Intervenor and the Association on July 24, 1953. The petition in this case was filed on August 20, 1953.

The Petitioner contends, contrary to the Employer and the Intervenor, that the Employer's history of bargaining as a member of the multiemployer group has not been long enough to preclude finding appropriate a single-employer unit in this case. We do not agree. Since October 1, 1952, the Employer has indicated an unqualified desire to participate in multiemployer bargaining. On that date it adopted the existing Association agreement and in August 1953 joined in the ratification of the extension agreement negotiated by the Association. It is clear, therefore, that the Employer has bargained, and has recently unequivocally reaffirmed its desire to continue to bargain, on a multiemployer basis. The Association has bargained for other employers in the industry from 1937 or 1938 to date. Under all the circumstances we find that the single-employer unit sought is not appropriate and that a multiemployer unit comprising the employees of all members of the Association, including the Employer, is alone appropriate.[2] As the petition seeks an inappropriate unit, it will be dismissed.[3]

[The Board dismissed the petition.]

Member Rodgers took no part in the consideration of the above Decision and Order.

[2] W. S. Ponton of N. J. Inc., 93 NLRB 924. In that case a multiemployer bargaining history of approximately 11 months was held controlling, even though the Employer sought to withdraw from multiemployer bargaining during the term of an existing agreement. See Taylor and Boggis Foundry Division of Consolidated Iron-Steel Mfg. Co., 98 NLRB 481, where a 19-month multiemployer history was held controlling notwithstanding a prior 6-year single employer bargaining history. See also Denver Heating, Piping and Air Conditioning Contractors, 99 NLRB 251, particularly at footnote 12.

Where the Board has found a brief history of multiemployer bargaining insufficient to preclude single-employer units, the record showed, unlike the situation here, that the multiemployer bargaining had been preceded by prolonged single-employer bargaining. Cf. Van Iderstine Company, 95 NLRB 966; Jerry Fairbanks, Inc., 93 NLRB 898; Central Optical Company, et al., 88 NLRB 416; Norcal Packing Company, 76 NLRB 254.

[3] In view of our decision herein, we find it unnecessary to consider the contract-bar contentions of the Employer and Intervenor