3. The credited evidence considered as a whole is insufficient to make out or establish a violation by the Respondent Union of Section 8 (b) (1) (A) and (2), or either, of the Act, as alleged in paragraphs V, VI, VII, and IX of the consolidated complaint.

[Recommendations omitted from publication in this volume]

ATLAS STORAGE DIVISION, P & V ATLAS INDUSTRIAL CENTER, INC. *and* R. THOMAS BUSCH, PETITIONER *and* CHAUFFEURS, TEAMSTERS & HELPERS GENERAL LOCAL UNION No. 200, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL. *Case No. 13–RD–123. October 9, 1952*

Decision and Order

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Joseph Cohen, 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 Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Herzog and Members Murdock and Peterson].

Upon the entire record in this case, the Board finds:[1]

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

2. The Petitioner asserts that the Union is no longer the representative of the employees designated in the petition as defined in Section 9 (a) of the Act. The Union, a labor organization, is the currently recognized representative of the Employer's employees, who are part of a multiemployer bargaining unit.

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 decertification of the Union in a unit of inland warehouse employees, limited to the employees of this Employer. The Union contends that the above unit is inappropriate, because it is but a segment of a multiemployer unit which the Union has represented for some time.

Since 1937, the Union has bargained with a committee of the Milwaukee Warehousemen's Association, which represented the instant

[1] The Union moved to strike the Employer's reply brief. As special leave of the Board to file a reply brief was not obtained, the Union's motion is granted. *Peerless Yeast Company,* 86 NLRB 1098. Accordingly, the Employer's brief was not considered by the Board

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Employer and other inland warehouse companies. The contracts consummated through these joint negotiations were signed by both the Association and the individual employers. Although the practice was changed in 1948, in that the Association ceased to be a party signatory to the collective agreements, the past practice of employer participation in negotiations through the appointment of association bargaining committees continued. With few exceptions, the employer members of the Association now individually sign one contract.

The last collective bargaining contract was executed on April 16, 1950, modified on December 15, 1950, and terminated on April 15, 1952. This contract provided that it should continue in effect from year to year thereafter in the absence of a notice served by either party upon the other 60 days before its anniversary date. On February 4, 1952, the Union notified the Employer of its desire to negotiate changes in the agreement. Negotiations were conducted between the Association's committee and the Union. No agreement was reached and no new contract has been executed. On April 18, 1952, the Petitioner filed his petition herein. Upon receipt of a notice of representation hearing, the Employer, on May 14, 1952, informed the Union of its withdrawal of recognition of the Union as the bargaining representative of its inland employees, and its withdrawal of the authority previously granted to the Association's committee to represent it in bargaining negotiations with this Union.[2]

In accordance with the Union's contentions, we find that the pattern of bargaining described above has been multiemployer in nature.[3] The fact that the committee negotiating with the Union had no authority to bind the Employer and the further fact that the Employer reserved the right to give final approval to any agreement reached through such negotiations are not controlling, and do not justify a finding that a single employer unit is appropriate.[4] As the Employer has participated in joint bargaining with the Union for many years through the Association's committees, we find that a multiemployer unit including employees of this Employer has been established.[5]

The Employer has not taken the steps required for severance of its employees from the multiemployer unit. Nowhere does the record show that the Employer has withdrawn from membership in the

[2] The Employer has two divisions, one inland and one water front, both being association members. Only the former is involved here. Negotiations concurrent with those affecting these *inland* warehouse employees have been conducted for many years between the Association's committee and Local 815, International Longshoremen's Assn, AFL, encompassing all *water front* warehouse employees. This multiemployer bargaining resulted in the execution of a contract on April 15, 1952, between the Employer's water-front division and the Longshoremen. The Employer has not revoked the Association's authority to represent it in negotiations for these employees.

[3] *Fish Industry Committee*, 98 NLRB 696.

[4] *Bryant's Marina, Inc.*, 92 NLRB 718.

[5] We need not now decide which employer members of the Association should be included within such multiemployer unit.

Association. Nor has the Employer indicated an intent to abandon its practice of bargaining jointly with other employer members of the Association for its water-front employees. In these circumstances, we find that the Employer has not unequivocally evinced an intent to pursue a course of individual action with regard to its labor relations.[6]

As the Employer has not effectively severed itself from the Association, we believe the above bargaining history is controlling in determining the appropriate unit in this proceeding. Thus, we find that the proposed unit, encompassing solely the employees of this Employer, is too limited in scope. The proposed unit being inappropriate, we shall dismiss the petition.

Order

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

[6] *Washington Hardware Company,* 95 NLRB 1001, and cases cited therein; *Pioneer Incorporated,* 90 NLRB 1848; *Coca Cola Bottling Works Company,* 91 NLRB 351.

CANS, INCORPORATED *and* DISTRICT NO. 8, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL, PETITIONER. *Cases Nos. 13–RC–2684 and 13–RC–2750. October 9, 1952*

Decision and Direction of Elections

Upon separate petitions duly filed, a consolidated hearing was held before Rush F. Hall and John P. von Rohr, hearing officers.[1] The hearing officers' 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 these cases to a three-member panel [Members Houston, Styles, and Peterson].

Upon the entire record in these cases, the Board finds:

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

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

3. Questions affecting commerce exist 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.

[1] The hearing on June 6, 1952, was held before Rush F. Hall; the hearing on June 13 was conducted before John P. von Rohr.

[2] United Steelworkers of America, Local No. 8745, CIO, herein called the Intervenor, was permitted to intervene in this proceeding on the basis of its recently expired contract with the Employer.