

letterpress employees, and that the unit sought by the Petitioner is therefore in fact coextensive in scope with the existing unit.

In view of the foregoing, and as the Petitioner is a union which traditionally represents lithographic employees, we find that the lithographic employees whom the Petitioner seeks to represent may, if they so desire, constitute a separate appropriate unit. We shall not, however, make any final unit determination at this time but shall first ascertain the desires of these employees as expressed in the election hereinafter directed. Accordingly, we shall direct that an election be held among the employees in the following voting group: All lithographic production employees of the Employer employed at the plant of Desaulniers and Company, Moline, Illinois, excluding all other employees, guards, and supervisors as defined in the Act.¹²

5. If a majority vote for the Petitioner they will be taken to have indicated their desire to constitute a separate appropriate unit, and the Regional Director conducting the election directed herein is instructed to issue a certification of representatives to the Petitioner for the unit described in paragraph 4, which the Board, under such circumstances, finds to be appropriate for the purposes of collective bargaining. In the event a majority do not vote for the Petitioner, these employees shall remain a part of the existing unit and the Regional Director will issue a certification of results of election to such effect.

[Text of Direction of Election omitted from publication.]

¹² *Pacific Coast Association of Pulp and Paper Manufacturers*, 94 NLRB 477, 482.

McAnary & Welter, Inc., Petitioner and International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO, Local 142

Robert A. Lucas, Petitioner and International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO, Local 142. Cases Nos. 13-RM-257 and 13-RD-270. April 13, 1956

DECISION AND ORDER

Upon petitions duly filed under Section 9 (c) of the National Labor Relations Act, a consolidated hearing was held before Edward T. Maslanka, 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 these cases, the Board finds:

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

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

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 Petitioners seek an election limited to employees of the Employer. The Union, Local 142, moved to dismiss the petitions on the ground that only a multiemployer unit is appropriate.

Since the Employer's organization in February 1954, it has been operating a Ford agency previously operated at the same location by another employer. In July 1954, the Employer and 12 other employers entered into a 1-year collective-bargaining agreement with Local 242 of the Union's international.¹ Timely notice forestalling automatic renewal, as required by the contract, was served upon the 13 employers by Local 242 prior to the July 1, 1955, expiration date. Local 242 merged with Local 142, the Union herein, in August 1955. Following delays resulting from the merger, the Union invited all 13 employers, including the Employer herein, to meet with it on October 12 for purposes of negotiating a new agreement. Ray Thomas, an attorney, notified Mike Sawochka, secretary-treasurer of the Union, that he represented the Employer and three other employers. Thomas informed the Union that, for personal reasons, he could not attend the October 12, 1955, meeting, but assured Sawochka that the four employers he represented ". . . would go along with the same agreement that was negotiated by the employer's committee, the same as they had in the past. . . ."

At the meeting of October 12, the employers attending selected from among themselves a 6-man bargaining committee composed of the same employer representatives who had negotiated the 1954-55 agreement. On November 28, the Employer negotiating committee and the Union completed negotiations on a new 1-year agreement to be effective December 1, 1955. The Union's members, including employees of the Employer, approved this agreement on December 7 at a union meeting. A separate draft of the agreement was sent to each of the 13 employers for signature.

Sawochka telephoned McAnary, the Employer's secretary-treasurer, on December 21 and asked what was delaying return of the signed document. Sawochka testified that McAnary stated that some of his employees were dissatisfied with the insurance plan in the agreement, but that he would certainly sign the contract if it was satisfactory to the

¹ All 13 employers signed a single document which provides as follows in the acknowledgment clause:

THIS AGREEMENT, made and entered into by and between the undersigned, hereinafter referred to as Employer or Party of the First Part, and . . . LOCAL NO. 242. . . .

employees. Sawochka replied that the employees had approved the agreement at the union meeting of December 7. The same day, Welter, the Employer's president, came in person to Sawochka's office to discuss the matter. As a result of their discussion, Welter, himself, arranged a meeting of his employees with Sawochka that day. Sawochka testified that the employees unanimously approved the insurance plan by standing vote at that meeting.

After the meeting which was not attended by McAnary or Welter, Sawochka reported the results to McAnary and Welter at their office and again demanded that McAnary sign the contract. McAnary actually signed the agreement at this moment, but Welter objected and there ensued an argument between Welter and Sawochka over the wage rates, which did not suit Welter. Welter also testified at the hearing that it had been reported to him about 10 days before the signing incident that the employees had conducted a secret ballot among themselves and had voted 17 to 4 against continued representation by the Union, and for this reason, among others, he objected to execution of the agreement. In any event, the signed document was never delivered to Sawochka, but was destroyed later that day by McAnary. The next day, December 22, Attorney Thomas, Welter, and others, together representing four employers met with Sawochka and demanded substantial changes in the agreement. Sawochka protested that it was too late to renegotiate and apparently no concessions were made. The demands of these employers were sent to the Union over Attorney Thomas' signature in a letter dated December 28. Demands included 6 substantive changes in the contract including either elimination of the company welfare contributions or reduction of wage rates, and extension of the contract term from 1 to 5 years.

The Employer filed its petition herein on January 3, 1956, and on January 13, a group of employees filed the decertification petition which was consolidated with the Employer's petition.

In these circumstances, it is clear that there had been a substantial period of multiemployer bargaining which would ordinarily be determinative of the scope of the appropriate unit. However, the Board has long held that, despite a multiemployer bargaining history, a unit limited to employees of the employer becomes appropriate if the employer unequivocally manifests its intention to withdraw from multiemployer bargaining and to pursue an individual course of action after proper notice at an appropriate time.²

The record in this case establishes that Attorney Thomas was clothed with authority to participate in behalf of the Employer and other employers in the multiemployer bargaining. Through Thomas, the Employer gave its approval in advance to the designation of a bargain-

² *The Milk and Ice Cream Dealers of the Greater Cincinnati, Ohio, Area, et al.*, 94 NLRB 23, 25.

ing committee to carry out negotiations in behalf of the informal, *ad hoc*, Employer group of which it was a part. The Employer thus endorsed the joint negotiations. Moreover, it gave specific assurances that it too would go along with the results thereof. The Employer thereby clearly evinced its intention to remain with the existing multi-employer bargaining unit for the purpose of negotiating a new contract.³ It made no attempt to withdraw until after the agreement was negotiated and after actual signing by one of its corporate officers. We regard the attempted withdrawal at this late stage as having been made at an inappropriate time and as ineffective.⁴ Therefore, we find that the multiemployer unit is the only appropriate bargaining unit at this time.⁵ Accordingly, we shall dismiss both petitions because they seek elections in an inappropriate unit.

[The Board dismissed the petitions.]

CHAIRMAN LEEDOM and MEMBER BEAN, dissenting:

We disagree with the majority's decision because we do not believe that the Board has the statutory power to force an employer to bargain on a multiemployer basis under the circumstances of this case. The Union here does not contend—and the majority does not find—that the Employer's signing of the contract without delivering it created a binding agreement. In the absence of a valid collective-bargaining agreement by which an employer may be deemed to have voluntarily bound himself to a multiemployer unit for the period of the contract; it must be held that the Board cannot prevent an employer from withdrawing from a multiemployer unit.

Express statutory authority to find a multiemployer unit appropriate is absent from both the Wagner Act and the Taft-Hartley Act. Thus, both Acts provide in Section 9 (b) that, "The Board shall decide in each case whether . . . the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof." However, as early as 1938, the Board began finding multiemployer units appropriate on the ground that the Wagner Act included within the term *employer* "any person acting in the interest of an employer, directly or indirectly" and the term *person* "includes one or more . . . associations. . . ."⁶ It was clear throughout the Wagner Act period that the Board did not *create* multi-employer units, but merely recognized them as appropriate once they had come into being through the voluntary action of the parties. The Board never attempted to require employers to delegate bargain-

³ Cf., *Pacific Metals Company, Ltd.*, 91 NLRB 696, 700.

⁴ Cf., *Hollingsworth & Whitney Division of Scott Paper Co.*, 115 NLRB 15; *International Paper Co.*, 115 NLRB 17.

⁵ Insofar as this case is inconsistent with *Bagley Produce Company*, 108 NLRB 1267, that case is hereby overruled.

⁶ *Ship Owners' Association of the Pacific Coast*, 7 NLRB 1102, 1125.

ing to an association or quasi-association nor did it prevent employers from withdrawing a delegation of power.⁷

The legislative history of the Taft-Hartley Act shows that the Congress was aware of the Board's multiemployer unit doctrine and approved so long as the Board protected the employer's freedom to withdraw. The original Senate bill, as reported out of committee, qualified the definition of *employer* as follows:

Provided, That for purposes of Section 9 (b) hereof, the term "employer" shall not include a group of employers except where such employers have voluntarily associated themselves together for the purposes of collective bargaining.⁸

The Senate report on the bill justified the proviso in these terms:

(2) "Employer:" The meaning of this term has been amended by the insertion of language which makes it clear that the Board may deem an employer association to be an employer, provided the individual employers in such association have voluntarily delegated their authority to bargain collectively with their employees to such an association. Under current decisions of the National Labor Relations Board the Board itself has reached such a construction relying on the phrase in the existing statute "acting in the interest of an employer." Although this interpretation has been challenged (see *Matter of Ship Owners' Association of the Pacific Coast*, 7 NLRB 1002, 103 F. 2d 993; 308 U. S. 401) the Supreme Court has never passed squarely on the question. Consequently, this amendment merely approves of those Board interpretations. By the inclusion of the word "voluntarily," however, the bill makes it clear that the Board cannot treat an employer association as an employer insofar as any individual employer has failed to delegate the association to act as his bargaining representative or has withdrawn authority from it to act in that capacity.⁹

Although "troubled" by "the use of the word 'voluntarily,'" signers of the minority report on this bill stated:

We, of course, are of the opinion that the establishment of a multi-employer unit should be conditioned upon employer consent.

The minority report then expresses objection to the word "voluntarily" because it might lead the Board to use of a "subjective standard" in finding whether or not a multiemployer unit is appropriate rather than determination on the "basis of whether a past course of conduct

⁷ *Bercut-Richards Packing Company*, 68 NLRB 605; *Advance Tanning Company*, 60 NLRB 923; *Rayonier Incorporated*, 52 NLRB 1269, 1275.

⁸ Section 2 (2), S. 1126, as reported, 80th Cong., 1st Sess. (1947).

⁹ Sen. Rep. No. 105, 80th Cong., 1st Sess. (1947), 18.

demonstrates the employer's desire to be bound by group rather than individual action." ¹⁰ And, in discussing the same bill on the floor of the Senate, Senator Taft commented:

. . . The original Wagner Act said nothing about any unit larger than an employer unit, but the Board has held that if the employers voluntarily associate themselves together, then the Board may certify one bargaining agent for the men to deal with an employers' association. However, any employer can break it up today, and he can break it up after the adoption of this amendment. That situation has not changed. In the committee bill we specifically recognize the rule of the Board that if there is a voluntary association of employers they may certify one man to act for all the employees of those employers. . . .¹¹

However, this proviso in the Senate bill was eliminated in the conference bill. The omission was explained in this manner in the conference report:

. . . The treatment in the Senate amendment of the term "employer" for the purposes of Section 9 (b) is omitted from the conference agreement, since it merely restates the existing practice of the Board in the fixing of bargaining units containing employees of more than one employer, and *it is not thought that the Board will or ought to change its practice in this respect.* [Emphasis added.]¹²

It appears clear to us, as the Second Circuit has suggested recently, that ". . . Congress, in enacting the Taft-Hartley Act, did not intend to interfere with the then established practice of multiemployer bargaining built up by the Board under the Wagner Act."¹³ However, it is equally clear to us that Congress did not intend that the multi-employer doctrine should be extended so that an employer is forced to remain involuntarily part of a multiemployer unit.

In the present case, the Employer unequivocally indicated an intent to withdraw from the multiemployer unit before it became a party to a binding collective-bargaining agreement. This was a timely withdrawal under the scheme of the Act and Board precedent¹⁴ and therefore the Board is without power to compel the Employer to adhere to the broader bargaining unit which the majority now finds to be appropriate. Accordingly, we would not dismiss the petitions, but instead would direct an election in a unit limited to employees of the Employer.

¹⁰ Footnote 9, *supra*, part 2, p. 35.

¹¹ Congressional Record, Senate, May 6, 1947, 80th Cong., 1st Sess., 4705.

¹² House Conference Rep. No. 510, 80th Cong., 1st Sess., 31 and 32.

¹³ *Truck Drivers Local Union No. 449 v. N. L. R. B. (Buffalo Linen Supply Co.)*, 231 F. 2d 110 (C. A. 2).

¹⁴ *Bagley Produce Company*, 108 NLRB 1267.