

Vaughn & Taylor Construction Co., Inc., Petitioner and International Union of Operating Engineers, Hoisting & Portable Local No. 627 and International Union of Operating Engineers, Local No. 101 and United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Steam and Refrigeration Fitters Local No. 344 and United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Pipeliners Local Union 798.¹ *Cases Nos. 16-RM-97, 16-RM-102, 16-RM-100, 16-RM-98, 16-RM-99, and 16-RM-101. May 24, 1956*

DECISION AND DIRECTION OF ELECTIONS

Upon petitions duly filed under Section 9 (c) of the National Labor Relations Act, a consolidated hearing was held before Lewis A. Ward, 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 certain employees of the Employer.

3. The Operating Engineers moved to dismiss the petitions in Cases Nos. 16-RM-97, 16-RM-100, and 16-RM-102 on the ground of contract bar. For reasons stated hereinafter, the motion is hereby denied. The Operating Engineers urges two sets of agreements as a bar to this proceeding. The first of these is entitled an "Agreement between the International Union of Operating Engineers and the Main Pipeline Contractors," and is dated September 1, 1949. It is signed by the Operating Engineers, the Employer, and a number of other contractors who, it was conceded, were then members of a multiemployer association known as the Pipeline Contractors Association. The contract was not signed by the Association, but bears the individual signatures of the several contractor members. It is to continue in effect until January 1, 1951, and thereafter from year to year absent 60 days' notice to terminate. The second agreement asserted as a bar is between the Operating Engineers and the "Pipeline Contractors Association, its contractor members and such other mainline pipeline contractors who execute an acceptance" of its terms.² It is signed only by

¹The unions are hereinafter respectively referred to as the Operating Engineers, the Fitters, and the Pipeliners.

²Attached to the contract is a form letter of acceptance with blanks provided for the signatures of representatives of the "Company" and of the Operating Engineers. Presumably, a contractor not a member of the Association wishing to execute the agreement, need only sign one of these form letters to become bound by the terms of the contract.

the Operating Engineers and by the Association. None of the pipeline contractors appear to have individually signed this agreement. It is effective until May 31, 1955, and has the same termination provision as the earlier contract. The two agreements cover the same classifications of employees and the same type of work, consisting of the construction and installation of main pipelines. The later agreement in addition covers work on gathering systems.

In answer to the Operating Engineers' contract-bar contention, the Employer takes the position that it is bound by neither contract because of its withdrawal from the Association. According to the uncontradicted testimony of the Employer's secretary-treasurer, the Employer withdrew from the Association in 1951 or 1952, and at some undisclosed time thereafter, was formally advised that it had been stricken from the rolls of the Association for failure to renew its annual membership. The Employer's witness further testified that the 1949 agreement was the only contract the Employer had ever signed covering any of its employees, and that it never thereafter entered into a new agreement with the Operating Engineers. The union submitted no evidence to rebut these assertions or to show that the Employer ever became, in any manner, a party to the 1953 contract.

In these circumstances, and particularly in view of the fact that both contracts purport to cover the same classifications of employees and generally the same type of work, we find that the 1949 agreement has been superseded by the more recent contract and is no longer in effect. We are likewise satisfied, in view of the uncontroverted evidence, that the Employer has never been bound by the 1953 agreement.³ We find, therefore, contrary to the Operating Engineers' contention, that neither contract can operate as a bar to a present determination of representatives.⁴

Accordingly, we find that 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.

4. The Employer's employees are presently working at two separate locations, Lindsay, Oklahoma, and Hardtner, Kansas.⁵ The Employer filed six separate petitions, in each case seeking an election at one or

³ *Pacific Metals Company, Ltd., et al.*, 91 NLRB 696.

⁴ As set forth above, the 1949 contract appears to have been an agreement entered into by the Operating Engineers with an employer association, embodied in a single document signed by all the various employers. The Operating Engineers nevertheless asserted at the hearing that this contract constitutes the individual obligation of this Employer. The facts as to the issue thus raised were not litigated. Assuming, as contended by the Operating Engineers, that the Employer's separate signature may have bound it individually to this contract, the record discloses that, in any event, the Employer filed its petitions on November 1, 1955, 1 day before this contract's current *Mill B* date of November 2, thereby precluding the contract from serving as a bar to these proceedings. *Bethlehem Pacific Coast Steel Corporation*, 114 NLRB 1197.

⁵ The Employer is also engaged in construction work at Perryton, Texas. This operation is not involved herein.

the other of these two construction sites among the employees in a particular craft group claimed to be represented by one of the several labor organizations here involved. At the hearing the Employer moved, without objection, to amend its unit requests from craft units on a separate job-site basis to craft units on a companywide basis. As amended, the petitions are for three separate units composed of the classifications claimed to be represented by the Operating Engineers, the Pipeliners, and the Fitters respectively.

At the hearing, the Employer and the Operating Engineers stipulated as to the appropriateness of a companywide unit of operators of various machines and other mechanical equipment. The Employer and the Pipeliners entered into a similar stipulation with respect to a unit of welders and related categories. The Fitters would not agree to a companywide unit because of its limited territorial jurisdiction which, although encompassing the Employer's Lindsay operations, does not extend beyond 34 counties in the State of Oklahoma. In these circumstances, the Employer requested permission to withdraw its petition in Case No. 16-RM-98, which request was referred to the Board in view of the fact that the Fitters was actively picketing the Lindsay project at the time of the hearing. No ruling having been made on the request for withdrawal, the Employer and the Fitters tentatively agreed that a unit made up *inter alia* of the Employer's welders, and confined to the Fitters' territorial jurisdiction, might be appropriate for the purposes of collective bargaining. The proposed unit, then would include such of the Employer's employees, in the agreed categories, as are presently employed at the Lindsay, Oklahoma, project.

The Fitters' failure to agree to a companywide unit has thus raised an issue concerning the scope of the unit in this case, which issue, however, was not specifically litigated at the hearing. Although the Fitters opposed the establishment of the broader unit on the sole ground of its own jurisdictional inhibitions,⁶ it offered no positive evidence in support of its unit contention. On the other hand, the bargaining history disclosed by the record shows that the Employer's employees have been bargained for under contracts as part of Employerwide or multiemployer units. On this state of the record, and in the absence of any substantial factors indicating the appropriateness of separate units at each of the Employer's operations, we find, in accord with the previously existing pattern of bargaining, that companywide units are appropriate for the purposes of collective bargaining in this case, and hereby grant the Employer's request to with-

⁶ The Board has consistently refused to accord controlling weight to the jurisdictional limitations of a union in making its unit determinations. *Jewel Food Stores*, 111 NLRB 1368; cf. *The Heating, Piping & Air Conditioning Contractors*, 110 NLRB 261.

draw its petition in Case No. 16-RM-98 without prejudice. However, as the Fitters was picketing the Employer's Lindsay operations, and as it has indicated an interest in representing the Employer's welders employed at that location, we shall place its name on the ballot in the election for the welders' unit hereinafter found appropriate.⁷

Accordingly, we find, in accord with the stipulations of the parties, that the following groups of employees of the Employer whose main office is located at Odessa, Texas, constitute separate appropriate units for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

(a) Operators of trenching machines, boom cats, bulldozers, back fillers, cleaning and doping machines, backhoes, draglines, cranes and other shovel type machines, and mechanics; operators of bending machines, tow cats, gin trucks, dope pots, power agitators, small pumps, welding machines, air compressors, greasers and fuel trucks, and mechanic helpers, oilers, or swampers on trench machines and shovel type equipment, but excluding all other classifications, office and clerical employees, professional and technical employees, guards, and supervisors as defined in the Act.

(b) Welders, welders' helpers, stabbers, spacers, and clamp men, but excluding all other classifications, office and clerical employees, professional and technical employees, guards, and supervisors as defined in the Act.

5. It was indicated at the hearing that a strike at both of the Employer's establishments started on or about October 12, 1955, and that several of the strikers have been permanently replaced. The Pipeliners and the Fitters contend that only the employees working during the week ending before the strike should be permitted to vote. No unfair labor practice charges having been filed by any of the parties herein, we find no merit in this contention. It is well established that economic strikers lose their right to reinstatement upon being permanently replaced in a specific job.⁸ In accordance with that principle, we shall adhere to our usual practice of determining voting eligibility by employment during the payroll period immediately preceding the date of issuance of the Decision and Direction of Election.⁹ We shall permit all strikers and all persons hired since the date of the strike to vote subject to challenge, as the record is incomplete as to their eligibility to vote.

[Text of Direction of Elections omitted from publication.]

⁷ Should the Fitters not wish to participate in the election, it may upon prompt request to, and approval by, the Regional Director, have its name removed from the ballot in accordance with Section 102.61 of the Board's Rules and Regulations.

⁸ *John W. Thomas Co.*, 111 NLRB 226

⁹ *Walterboro Manufacturing Corporation*, 106 NLRB 1383.