

Jack Glaser and Milton Glaser, Individually, d/b/a Encino Shirt Company, Petitioner and Los Angeles Joint Board, Amalgamated Clothing Workers of America, AFL-CIO. Case No. 21-RM-398. January 9, 1957

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Fred W. Davis, 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 Employer¹ is engaged in commerce within the meaning of the Act.²
2. The labor organization involved claims to represent certain employees of the Employer.
3. The question of representation.

The Los Angeles Joint Board, Amalgamated Clothing Workers of America, AFL-CIO herein called the Union, contends that an existing associationwide collective-bargaining contract with the Amalgamated Group of the Pacific Coast Garment Manufacturers Association, herein called the Association, is a bar to this proceeding. The Petitioner-Employer contends that the contract is not a bar.

The record discloses the following: On October 1, 1953, the Pacific Shirt Corporation, one intervenor herein, signed the Association contract for 2 plants in Los Angeles and 1 plant in San Fernando, the plant involved herein. This contract was to run for 3 years with the usual 60-day automatic renewal clause.

In the spring of 1954, Pacific ceased its manufacturing operations and became an investment company. As the result thereof, two new corporations, Amigo Shirt and Don Juan, respectively, were formed to take over the manufacturing operations of Pacific. The Don Juan Corporation operated one of the Los Angeles plants, while the Amigo operated the other Los Angeles plant and the San Fernando plant. Pacific stock is owned in equal shares by Sam Glaser and his brother-in-law, Barenfeld. Two-thirds of the stock of Amigo and Don Juan, respectively, is owned by Pacific and its two stockholders, Sam Glaser

¹ The Amigo Shirt Corporation, herein called Amigo, and the Pacific Shirt Corporation, herein called Pacific, were permitted to intervene.

² The Union urges that the petition be dismissed on the ground that the Petitioner's operations do not satisfy the Board's jurisdictional requirements. The evidence shows that Petitioner's service to Amigo, which is found herein to constitute a separate entity, amounted to over \$171,000 in the past year. Although Petitioner's operations are entirely within the State, it is uncontradicted that Amigo's direct outflow from the State is over one million dollars. We therefore find that Petitioner's operations satisfy the indirect outflow requirements for the assertion of jurisdiction. See *Jonesboro Grain Drying Cooperative*, 110 NLRB 481.

and Barenfeld; the balance by others. Notwithstanding this change in the corporate ownership of the 3 plants, management continued to recognize and deal with the Union, under the Association contract, as the majority representative of all 3 plants.

Amigo has continued to operate the Los Angeles plant, which was transferred to Amigo upon its formation. However, on December 5, 1955, it leased, with an option to purchase, the equipment and all machinery in the San Fernando plant to Sam Glaser's two nephews, operating under the name of Encino Shirt Company, the Employer-Petitioner herein. The lease provides that Encino is to maintain all equipment in good condition, that Encino is to pay and be responsible for all its own expenses of operation including maintenance costs, workmen's compensation insurance, labor costs, payroll taxes, and any and all other costs of doing business as a partnership, corporation, or otherwise. There is also a provision that should Encino act as a subcontractor for Amigo at Encino's plant, the contract prices for such work shall, by mutual understanding, be determined by the parties from time to time and prior to the manufacturing. Finally, the lease recites that it shall not be deemed an agreement of joint venture, copartnership, or association between the parties, each of whom is to be deemed and treated as an independent operator. There is nothing in the lease reserving to Amigo the right to control the hiring, firing, or supervision of Encino's employees.

Following the lease agreement, Encino became one of several subcontractors for Amigo. The procedure was for Amigo to deliver to Encino materials which Encino manufactured into shirts of specific design at an agreed price and returned to Amigo. Although the evidence shows that the same procedure is followed by Amigo's other subcontractors, the latter have no lease agreements with Amigo.³

In January 1956, when the Union contacted Encino for the purpose of having it execute a contract as a member of the Association, the Union was referred to Sam Glaser, one of the main stockholders of Amigo. Sam Glaser requested the Union, and the Union apparently agreed, to give Encino a chance to get established in its operation before requiring it to sign a contract. Encino apparently sought to comply with the Association contract, by transmitting payments for union dues collected from union members to the Union and making employer contributions, as required by the contract. The Union, however, returned to Encino the checks covering these payments, upon the ground that, as Encino was not a signatory to the contract, the Union could not accept the payments from Encino. Thereafter, Encino made these payments to Amigo, which in turn transmitted them to the Union.

³ Amigo does, however, lend to several of its subcontractors certain pieces of equipment and machinery to assist them in carrying out the contract.

This arrangement was continued until July 1956, when the instant petition was filed.

Although Amigo advanced funds to Encino to meet the first and second payroll requirements and Amigo still has title to Encino's assets which Amigo carries on its own books and for which it takes current depreciation, there is no evidence that Amigo exercises any control over the actual operation of Encino's plant. Encino apparently hires its own labor force and supervisors, makes its own payroll deductions, keeps its own books, and pays all Federal and State taxes. Apart from the fact that Encino operates the equipment under a lease agreement with an option to buy and the further fact that Amigo supplies practically all of Encino's additional equipment, there appears to be no major difference between the operation of Encino's plant and those of the other subcontractors which have contracts with Amigo.

The Union urges that Pacific and Amigo together with Encino constitute a single employer still subject to the Association contract of October 1, 1953, which was automatically renewed on August 1, 1956, and that therefore the present proceeding is barred. Encino, on the other hand, urges that it is an independent entity, having only a business relationship with Amigo.

While it is true that there is a common ownership of the stock of Amigo and Pacific and that the former owns the physical assets used by Encino, we view the relationship of Amigo to Encino as being essentially that of lessor to lessee and contractor to subcontractor. Thus, the record clearly establishes that under the lease and subcontract arrangement, Encino functions as a separate entity with Amigo having no right to control Encino's labor relations or the wages or working conditions of the latter's employees. The fact that the Union's refusal to accept Encino's checks for the transmission of employees dues required Encino, as a matter of temporary expediency, to enlist the cooperation of Amigo for that purpose, does not destroy the otherwise independent status of Encino, as indicated by the control which it exercises over its own employees. Nor is such status affected by the almost complete economic dependence of Encino upon Amigo for the continuance of its operations. Under all the circumstances, we find Encino to be a separate and independent employer of its employees.⁴

Although it may be contended that Encino had adopted and become bound by the Association contract, the filing of the present employer-petition by Encino near the termination date of the contract and prior to the automatic renewal date thereof, is a sufficient indication that Encino no longer desires to bargain on a multiple-employer

⁴ See *Swanson Brothers Logging Company*, 71 NLRB 614, 615, 616; *Consolidated Gas Company of Savannah*, 107 NLRB 148; *Chemical Tank Lines, Inc.*, 115 NLRB 221, 225; *Electronics Circuits, Inc.*, 115 NLRB 940; *Central Dairy Products Co.*, 114 NLRB 1189.

basis.⁵ Accordingly, we find that the Association contact is no bar to this proceeding.⁶

We find that a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The appropriate unit:

The parties agreed as to the composition of the unit except that the Petitioner would include the shipping and receiving employees, while the Union would exclude them on the ground that the area practice in the industry is to exclude these clerks at the specific request of the employers. The evidence shows there are two shipping and receiving clerks whose duties are to check in bundles of piece goods and check out all finished products. They are supervised by the partners of the Petitioner in contrast to the production employees who are under separate immediate supervision. These clerks are paid on a straight hourly basis. On the basis of the above, we find that these shipping and receiving clerks are plant clericals such as those we customarily include in the unit, unless the parties agree to their exclusion. Accordingly, we shall include them in the unit.

We find that the following employees at the Employer-Petitioner's San Fernando, California, plant,⁷ constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All production and maintenance employees including the receiving and shipping employees, but excluding executives, office clerical employees, administrative employees, salesmen, designers, watchmen, guards, and all supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

⁵ *Vaughn & Taylor Construction Co., Inc.*, 115 NLRB 1404, 1405, footnote 4.

⁶ *Everett Auto Company*, 107 NLRB 1449.

⁷ In view of the withdrawal of the Employer-Petitioner from the Association bargaining as indicated by the filing of the present petition, we find a single-employer unit appropriate. *Economy Shade Company*, 91 NLRB 1552, 1553; *Owens-Illinois Glass Company*, 112 NLRB 172, 177.

Walton-Young Corp. and International Association of Machinists, AFL-CIO, Petitioner. Case No. 3-RC-1771. January 9, 1957

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before John M. Shea, Jr.,