

Machinery Movers and Erectors Division, Michigan Cartagemen's Association, Petitioner and Riggers' Local 575, International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO.¹ *Case No. 7-RM-159. May 27, 1957*

DECISION, ORDER, AND DIRECTION OF ELECTION

Upon a petition duly filed² under Section 9 (c) of the National Labor Relations Act, a hearing was held before Emil C. Farkas, 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,³ the Board⁴ finds:

1. Michigan Cartagemen's Association is a Michigan corporation. Its Machinery Movers and Erectors Division was organized for the purpose, among others, of handling labor relations matters for members located in eastern Michigan who are engaged in dismantling, moving, and erecting machinery.⁵ Every year from 1947 until 1953, and every 3 years since then, members of the Division have elected a committee, which then selects its own chairman, to negotiate a collective-bargaining agreement with Riggers' Local 575. Upon becoming a member of the Division each employer executes a power of attorney designating the chairman of the negotiating committee its agent to negotiate with Riggers' Local 575 and to sign collective-bargaining agreements which have been agreed upon by the committee and Riggers' Local 575. At the conclusion of negotiations, a master agreement is customarily executed by the Division and identical individual agreements are executed by the members. Under these circumstances, we find that the members of the Division have shown an unequivocal intention to be bound in collective bargaining by group rather than by

¹ Herein called Riggers' Local 575 Carpenters District Council of Detroit, Wayne, Oakland, Macomb, Sanilac and St Clair Counties and Vicinity, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, herein called Carpenters, and Detroit Building Trades Council and its affiliated unions except Carpenters, herein called the Council, were permitted to intervene at the hearing without objection.

² The Council and Carpenters moved to dismiss the petition because the Petitioner failed to list their names in its petition as having an interest in the employees petitioned for. As the moving Unions received formal notice of these proceedings and were represented at the hearing, they were not prejudiced. The motion is therefore denied.

³ The request of the Council and Carpenters for oral argument is denied as the record and the briefs adequately present the issues and the positions of the parties.

⁴ 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 Leedom and Members Murdock and Rodgers].

⁵ The following 13 employers are members of the Division: Barney's Cartage Co.; Boulevard Transfer Co.; Dearborn Machinery Movers; Don Blue Heavy Hauling Co.; Don Cartage Co.; Flint Machinery Movers, General Riggers & Erectors, Inc.; Thomas Goodfellow, Inc.; Judd Co., Inc.; Turner Cartage & Storage Co.; C. F. Turner Machinery Movers, Inc.; NorWest Machinery Movers; and Pearlman Cartage Company. Some of these companies also operate in other parts of Michigan and in other States.

individual action, and therefore constitute a single employer for jurisdictional purposes.⁶

During the year 1955, members of the Division as a group received in excess of \$100,000 for services directly connected with the interstate carriage of machinery. We therefore find that the members of the Division are, as a group, engaged in commerce, and that it will effectuate the policies of the Act to assert jurisdiction.⁷

One of the companies listed on the employer petition is Commercial Contracting Company. However, this company is not a member of the Division, and although it has upon occasion participated in negotiations and agreed to be bound thereby, it has never done so as part of the group but has been represented separately. As Commercial Contracting Company has therefore not participated in collective bargaining through the Division, we shall not assert jurisdiction over it as part of the Division. Further, as the record contains no information as to the dollar volume of Commercial Contracting Company's operations, we shall not assert jurisdiction over it on an individual basis.

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

3. Carpenters and the Council contend that no question of representation exists because the Employer recognizes Riggers' Local 575 as the exclusive representative of the employees involved, no other labor organization claims to represent them, and the Employer signed a contract with Riggers' Local 575 covering these employees between the time of the filing of the petition and the time of the hearing. We do not agree. The filing of the petition by the Employer requesting an election among its employees, for whom Riggers' Local 575 claims to be the majority representative, raises a question of representation even though the Employer has recognized that Union for many years.⁸ Nor, in our opinion, does the mere existence of a contract between the Employer and that Union covering the employees petitioned for negate the existence of a question concerning representa-

⁶ *Insulation Contractors of Southern California, Inc*, 110 NLRB 638 We find no merit in the contention of the Council and Carpenters that the fact that, upon occasion, certain members of the Division sent or received communications directly from Riggers' Local 575 detracts from their status as members of the multiemployer group

⁷ *Breeding Transfer Company*, 110 NLRB 493, 494. The Council and Carpenters contend that the Board should refuse to assert jurisdiction over any part of the building and construction industry, that our assertion of jurisdiction herein will interfere with the operations of the National Joint Board for Settlement of Jurisdictional Disputes in the Building and Construction Industry, and that a certification of representatives in the present proceeding will result in making a jurisdictional award. In making these contentions, these Intervenor ask the Board to overrule the Board's contrary ruling on similar contentions in *The Plumbing Contractors Association of Baltimore, Maryland, Inc*, 93 NLRB 1081. We have considered the Board's rulings in that case on these issues, and for the reasons stated there have decided to adhere to the Board's position in that case. See also *The Heating, Piping & Air Conditioning Contractors, Cincinnati Association*, 110 NLRB 261; *Denver Heating, Piping and Air Conditioning Contractors Association*, 99 NLRB 251.

⁸ *J P & Kathleen O'Neil, et al*, 94 NLRB 1299.

tion when, as here, the petition was timely filed with respect to the execution of the contract,⁹ and the Union which is a party to the contract has never been certified by the Board and apparently desires Board certification.¹⁰ We therefore find that a 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.¹¹

4. The petition as amended at the hearing requests an election among all riggers and their apprentices who are employed by employer members of the Division in eastern Michigan, but excluding all employees classified as teamsters, hoisting engineers, millwrights, office and shop clerical employees, and supervisors. Riggers' Local 575 agrees to this unit description, which conforms with the historical unit for which it has contracted with the Division for many years. Carpenters and the Council contend the unit is inappropriate because (1) its scope is determined by the jurisdictional boundaries of Riggers' Local 575, and (2) riggers occasionally perform duties usually assigned to excluded classifications.

As to (1), in view of the bargaining history, the nature of the industry which requires Division members to transfer the employment situs to wherever they are able to obtain a contract, the fact that the area covered is contiguous, and no party has sought to represent riggers in a different unit, we find that the territorial extent of the unit is appropriately described.¹²

As to (2), the Petitioner contends, and the record shows, that employees classified as riggers are engaged primarily in dismantling, loading, transporting, unloading, and erecting machines and machine tools. All riggers are interchangeable with one another, but do not interchange with other classifications, and all receive the same pay, the same benefits, and have similar working conditions. The fact that some riggers may occasionally perform duties not strictly within this job description, or that other employees may also perform some of

⁹ Although the Board has held that an employer petition filed for the purpose of obtaining the benefit of dealing with a certified union is subject to the Board's contract bar rules (*Pazan Motor Freight, Inc.*, 116 NLRB 1568, 1570) it has not held that the execution of a contract subsequent to the filing of an employer petition is alone sufficient to bar an election.

¹⁰ Cf. *United States Gypsum Company*, 116 NLRB 1771, in which the Board under similar circumstances dismissed an employer petition when the union party to the contract had previously been certified by the Board and opposed the holding of an election.

¹¹ The Council and Carpenters also contend that current contracts which several employer members of the Division have with Carpenters covering millwrights constitute a bar to the present proceeding. However, as those contracts do not cover the employees involved herein, they are not a bar.

¹² See *The Heating, Piping & Air Conditioning Contractors, Cincinnati Association*, 110 NLRB 261, footnote 12. The scope of the unit includes the following counties in Michigan: Luce, Chippewa, Mackinac, Cheyebogan, Presque Isle, Otsego, Montmorency, Alpena, Crawford, Oscoda, Alcona, Roscommon, Ogemaw, Iosco, Clare, Gladwin, Arenac, Isabella, Midland, Bay, Huron, Gratiot, Saginaw, Tuscola, Sanilac, Clinton, Shiawassee, Genesee, Lapeer, St. Clair, Ingham, Livingston, Oakland, Macomb, Jackson, Washtenaw, and Wayne.

these tasks, does not render the unit inappropriate where, as here, the requested employees are engaged a substantial majority of their time in the duties described herein.¹³ Under all the circumstances, therefore, including the bargaining history, we find that the requested unit is appropriate.

The parties also disagree as to master riggers and general master riggers, whom the Petitioner and Riggers' Local 575 would include, but Carpenters and the Council would exclude as supervisors. These employees have traditionally been bargained for as part of the historical unit.¹⁴

Riggers work in crews of 1 to 10, depending on the requirements of the job. There is a master rigger in charge of each crew. Masters are also referred to as foremen, and receive 25 cents an hour more than riggers. When more than one crew is employed on a job, there is a general master rigger in charge of all crews. General masters are also called general foremen, and receive 25 cents an hour more than masters. The general master is responsible to the job superintendent. Masters and general masters are on the job at all times, while the superintendent visits the job site 2 or 3 times a day.

Masters and general masters have no authority to hire, discharge, or discipline riggers. When work is slack,¹⁵ masters and general masters are hired as members of rigging crews, but they are paid the higher rates for such work.

The contract requires that the master rigger "shall be responsible for seeing that the job is conducted efficiently." The master receives general instructions from the superintendent as to the nature of the job to be done, whether to dismantle, move, or erect one or more of a great variety of machines or machine tools. The master then decides how the job is to be done and tells the crew what to do and how to do it. For example, the master must estimate the weight of the load to be moved, decide how and where to set the A frames for lifting, which parts of the machine to move first, and how to open and close the plant roof.

Under these circumstances, we find that the master riggers and general master riggers spend a regular and substantial part of their time responsibly directing the work of the riggers, which direction requires the use of independent judgment, and are therefore supervisors within

¹³ See *The Plumbing Contractors Association of Baltimore, Maryland, Inc.*, 93 NLRB 1081, footnote 27. The Petitioner and Riggers' Local 575 agreed to exclude all millwrights engaged in laying outlines, aligning, and leveling, as requested by Carpenters. We emphasize that we are in no way attempting to make a jurisdictional award in the sense of job content or work assignments.

¹⁴ Riggers customarily report their grievances to their master riggers, who are members of Riggers' Local 575. Masters pass such grievances along to the job steward for presentation by him to a company executive.

¹⁵ Some employer witnesses testified they occasionally have a slack period of about 6 weeks in the spring. There is no contention, however, and the record does not show, that this is a seasonal industry.

the meaning of Section 2 (11) of the Act.¹⁶ Accordingly, we shall exclude them from the unit.

We find that the following employees constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9 (b) of the Act: All riggers and their apprentices who are employed in eastern Michigan by employer members of Machinery Movers and Erectors Division, Michigan Cartagemen's Association, but excluding all employees classified as teamsters, hoisting engineers, millwrights, office and shop clerical employees, master riggers, general master riggers, and supervisors as defined in the Act.¹⁷

5. During the period January 1 to September 30, 1956, the Employer employed an average of 457 riggers every month. The minimum monthly employment during the period was 417, and the maximum was 488. On these facts we find that employment in the unit is sufficiently stable to permit an election to be held herein.

[The Board dismissed the petition as to Commercial Contracting Company.]

[Text of Direction of Election omitted from publication.]

¹⁶ See *Clackamas Logging Company*, 113 NLRB 229, 236; *Whitmoyer Laboratories, Inc*, 114 NLRB 749. The fact that master and general master riggers are members of Riggers' Local 575 and handle union messages for their subordinates is irrelevant to the determination of their supervisory status. See *Local Union No. 878 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL (Arkansas Express, Inc)*, 92 NLRB 255, 266.

¹⁷ We have not accorded the Council or Carpenters a place on the ballot as they have not indicated that they desire to represent riggers. These organizations will, however, upon proper application to the Regional Director, be placed on the ballot.

Empire Milling Company and General Drivers, Warehousemen and Helpers Local Union No. 21, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO, Petitioner. Case No. 14-RC-3156. May 28, 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 Walter A. Werner, 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 Leedom and Members Murdock and Rodgers].