

**American Radiator and Standard Sanitary Corporation (Louisville Works) and General Drivers, Warehousemen and Helpers, Local Union No. 89, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, Petitioner.** *Case No. 9-RC-3108. October 29, 1957*

### DECISION AND ORDER

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

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 herein claim to represent certain employees of the Employer.<sup>1</sup>

3. The Employer is a Delaware corporation engaged in the manufacture of brass and enamel fixtures. Its only facility involved in this proceeding is its plant located in Louisville, Kentucky.

The Petitioner seeks to sever a unit composed of approximately 300 employees in 52 classifications from a plantwide unit currently represented by the Standard Allied Trades Council, AFL-CIO, hereinafter referred to as the Council.<sup>2</sup> The Employer contends that: (1) The petition is barred by various existing contracts;<sup>3</sup> and (2) the unit requested by the Petitioner is based upon extent of organization and is, in any event, inappropriate for bargaining purposes.<sup>4</sup>

<sup>1</sup> The following labor organizations were permitted to intervene in this proceeding on the basis of their contractual interests: Local No. 214, International Molders and Foundry Workers Union of North America, AFL-CIO; Local No. 66, Metal Polishers, Buffers, Platers and Helpers International Union, AFL-CIO; Local No. 2971, United Brotherhood of Carpenters and Joiners of America, AFL-CIO; Local Unions Nos. 681, 1344, and 1390, District Lodge No. 27, International Association of Machinists, AFL-CIO; and Standard Allied Trades Council, AFL-CIO. The nature of the contracts between these unions and the Employer is discussed hereinafter in the text.

<sup>2</sup> There are approximately 2,900 production and maintenance employees in the plantwide unit currently represented by the Council.

<sup>3</sup> At the hearing, the Employer urged three separate contracts as a bar to this petition. However, in its brief filed with the Board, the Employer does not renew this contention and has presumably abandoned it. In any event, we find no contract bar, as two of the contracts urged as a bar by the Employer were opened by timely notice and have since expired, and the third contract alleged as a bar clearly contains no substantive terms, but merely sets forth the collective-bargaining objectives of the parties in general terms and an agreed-upon procedure for thereafter reaching agreement thereon. See *Bethlehem Steel Co.*, 95 NLRB 1508, 1510, and cases cited therein.

<sup>4</sup> In view of our decision herein, we find it unnecessary to pass upon this contention and the motion to dismiss based thereon.

On July 29, 1941, pursuant to a Board-conducted election,<sup>5</sup> the Council was certified as exclusive bargaining representative for a unit composed of "all employees" of the Employer. The Employer and the Council have since executed successive contracts covering all the Employer's production and maintenance employees, except approximately 31 patternmakers,<sup>6</sup> the most recent contract between these parties having been in effect from April 21, 1955, to April 20, 1957. Negotiations for a new agreement were in progress at the date of the hearing.

The 1955 agreement between the Council and the Employer (like all prior agreements between these parties) covers many substantive terms and conditions of employment, and is referred to hereinafter as the master agreement.<sup>7</sup> It was negotiated by a bargaining committee, which included representatives of the 14 local unions affiliated with the Council, including the Petitioner, and was executed by the president of the Council and such representatives of the local unions. Article II of the master agreement states that its purpose is to incorporate ". . . all terms and provisions which properly belong in a collective bargaining agreement, excepting only wages, both straight time and piece work rates, departmental and/or classification seniority as provided for in Section 2 of Article V, working conditions, and hours peculiar to the individual crafts or department involved. . . ." Article III of the master agreement authorizes the Employer and the individual local unions to negotiate separately with respect to the foregoing items. Article II of the master agreement also contains a clause making all such individual agreements ". . . subject in all respects to the terms and provisions of this Master Agreement. . . ." Since the first master agreement between the Employer and the Council in 1941, the 14 local unions affiliated with the Council, including the Petitioner, have negotiated supplemental agreements with the Employer covering specified categories of employees, and dealing mainly with wages, overtime, and certain aspects of seniority. These agreements also implement the union-security and checkoff provision of the master contract.

Prior to the filing of the petition in the instant case, the Petitioner requested exclusive recognition by the Employer as bargaining agent for all employees who hold membership in Petitioner. The Employer refused this request for exclusive recognition and informed the Petitioner that the Employer would continue to recognize it only to the limited extent authorized by articles II and III of the Employer's

<sup>5</sup> Case No. 9-R-570 (not reported in printed volumes of Board Decisions and Orders).

<sup>6</sup> The Patternmakers' League is currently the separate, certified bargaining representative for these employees.

<sup>7</sup> The substantive terms and conditions of employment contained in the master agreement includes such matters as union security, seniority, hours of work, arbitration, holidays, vacations, overtime pay, and a bonus plan.

master agreement with the Council, the certified bargaining representative for the employees involved. At the date of the hearing, a series of bargaining sessions had already been held between the Council and the Employer relating to a new master agreement.<sup>8</sup> The record shows that Petitioner's representatives have joined with delegates from the other local unions which are affiliated with the Council and have participated in these bargaining meetings with the Employer on behalf of the Council, the customary collective-bargaining procedure which has prevailed in negotiating the master agreements since the Council's certification in 1941.

It is clear that, both prior to, and since the filing of, the petition in the case at bar, the Petitioner has been participating in the Council's negotiations with the Employer for a new master agreement in the same manner as it has participated for the past 17 years. Thus, at the date of the hearing Petitioner was engaged in bargaining with respect to the overall unit while at the same time seeking to sever a segment of that unit.<sup>9</sup> Furthermore, the Petitioner has evinced no intent to withdraw from the Council or to abandon its past practice of bargaining for its members through the certified bargaining agent. On the contrary, Petitioner stated at the hearing that it would adhere to a new master agreement, if ratified by its members. In view of the foregoing, the Petitioner has, in our opinion, taken a position wholly inconsistent with its attempt to establish that a question concerning representation exists with respect to the employees it here seeks to sever, and we so find.<sup>10</sup> We further find that, in these circumstances, it will not effectuate the purposes of the Act to permit the Petitioner to proceed with its petition.<sup>11</sup> Accordingly, we shall dismiss the instant petition.

<sup>8</sup> In addition to these meetings, three bargaining sessions had been held between the Petitioner and the Employer relating to a new supplemental agreement.

<sup>9</sup> The Petitioner contends, in effect, that in view of the history of bargaining by the Petitioner for supplemental contracts the Board should not treat this case as involving severance but should treat the Petitioner as the sole recognized representative of the employees covered by its separate agreement and should find that such employees constitute an established, separate unit, and not part of a plantwide unit represented by the Council. Petitioner cites Case No. 9-RC-3058 issued on June 14, 1957 (not reported in printed volumes of Board Decisions and Orders), involving the instant plant. In that case a union not affiliated with the Council sought to represent part of the group of employees covered by the supplemental agreement between the Employer and Local No. 681, District Lodge 27, International Association of Machinists, AFL-CIO. The Board there stated that the employees sought "are presently in the unit represented by IAM," and directed a self-determination election, placing only the petitioner and IAM on the ballot. However, the Board's action in that case is not to be construed as a finding that the employees sought were not part of a plantwide unit represented by the Council. The issue whether the bargaining on a plantwide basis or on the basis of separate groups of employees was controlling for the purpose of determining the appropriate unit was not before the Board, the sole issue being whether a segment of the group claimed by the IAM might be severed from the rest of that group. However, upon the record before us, we find that there has been effective bargaining on a plantwide basis, so that the instant petition is in effect one for severance of part of an existing unit.

<sup>10</sup> *Hollingsworth & Whitney Division of Scott Paper Company*, 115 NLRB 15; *International Paper Company*, 115 NLRB 17.

<sup>11</sup> *Ibid.*

We find, therefore, that 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.

[The Board dismissed the petition.]

---

**Oregon Teamsters' Security Plan Office and William C. Earhart, Administrator thereof, and of Teamsters Security Administration Fund, and Warehousemen Local No. 206, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO; International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO and Teamsters Building Association, Inc.; International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, and its Local No. 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers; Warehousemen Local No. 206, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO; International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO and Joint Council of Drivers, No. 37; International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, and its agents, John J. Sweeney, and Oregon Teamsters' Security Plan Office, and William C. Earhart, Administrator thereof, and of Teamsters Security Administration Fund and Office Employes International Union, Local No. 11. Cases Nos. 36-CA-410, 36-CA-637, 36-CA-638, 36-CA-639, 36-CA-647, and 36-CA-648. October 30, 1957**

### SUPPLEMENTAL DECISION AND ORDER

On January 10, 1955, Trial Examiner Martin S. Bennett issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached to the original Decision and Order herein. Thereafter, the Respondents, the General Counsel, and the Charging Union filed exceptions together with supporting briefs.

On August 25, 1955, the majority of the Board dismissed the complaints with respect to all the Respondents for jurisdictional reasons.<sup>1</sup> This decision was affirmed by the United States Court of Appeals for

<sup>1</sup> 113 NLRB 987 (Members Leedom and Rodgers dissented).

119 NLRB No. 31.