Chicago Metropolitan Home Builders Association, Petitioner *and* Chicago District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America. *Case No. 13–RM–341. December 24, 1957*

DECISION AND ORDER

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Raymond A. Jacobson, 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 Rodgers and Bean].

Upon the entire record [1] in this case, the Board finds: [2]

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

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

3. No question affecting commerce exists concerning the representation of employees of the Petitioner's members within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act, for the following reasons:

The Petitioner [3] contends that a single unit of all carpenters and apprentices employed by its members is appropriate for the purposes of collective bargaining. It asserts the appropriateness of this multi-employer unit on the grounds (a) that the Union has bargained collectively with another multiemployer association, Builders Association of Chicago,[4] and that other employer associations in the construction industry have also engaged in bargaining with other unions in the Chicago area; and (b) that the Union has in fact bargained collectively with the Petitioner since December 1954.

The Union contends that the petition should be dismissed on the ground that only single-employer units are here appropriate, and denies that it has ever bargained collectively with, or requested recognition by, the Petitioner.

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[1] National Association of Home Builders was permitted to file a brief as *amicus curiae.*

[2] The Petitioner's request for oral argument is hereby denied, as the record and the briefs, in our opinion, adequately reflect the issues and the positions of the parties.

[3] The Petitioner has approximately 377 employer-members, who are engaged in the construction of homes within the Chicago metropolitan area.

[4] This organization represents approximately 200 general contractors who are engaged for the most part in industrial, commercial, and institutional construction in the Chicago area.

As to (a), the Union has bargained collectively with the Builders Association of Chicago for about 50 years, the latest contract having been executed on June 1, 1957, for a period of 5 years; and the record shows that other associations of employers in the construction industry in the Chicago area have engaged in collective bargaining with labor organizations other than the Union. During the past 20 years, the Union has also entered into "short-form" contracts with nonmembers of the Builders Association, including many of the present members of the Petitioner, which contracts adopt the terms of the master contract with the Builders Association. The Petitioner contends that, in view of the aforedescribed history of multiemployer bargaining by various associations of builders in the Chicago vicinity, it follows that the multiemployer unit it seeks is appropriate. We find no merit in this contention. It is well settled that a single-employer unit is presumptively appropriate, and that to establish a claim for a broader unit a controlling history of collective bargaining on a broader basis by the employers and the union involved must exist.[5] The fact that *other* employers have engaged in multiemployer bargaining with the Union or with other unions representing their employees is therefore irrelevant to the issue at hand.

As to the Petitioner's second contention, that it has in fact bargained with the Union on a multiemployer basis, the record shows that between December 1954[6] and May 1957, the Petitioner's representatives made a number of overtures to representatives of the Union looking toward the execution of an agreement by the Union and Petitioner. The Petitioner contends, and the Union denies, that the record establishes that the Union finally consented to enter into such an agreement. However, it is undisputed that no such agreement was actually consummated, and that the Union, in fact, has, since the filing of the instant petition, obtained "short form" agreements from the individual members of Petitioner adopting the terms of the current agreement between the Union and the Builders' Association and formally asserting that the Petitioner is not the representative of the employer-signatories of such "short form" agreements.[7]

[5] E. g., *Arden Farms, et al.*, 117 NLRB 318.

[6] The Union contends that the Petitioner did not have the power to engage in collective bargaining on behalf of its members until its constitution and bylaws were amended in March 1957, so as to authorize it to act as bargaining agent. However, we do not find it necessary to resolve this issue, but shall assume that, as Petitioner contends, it was since December 1954 empowered to engage in collective bargaining for its members.

[7] The short-form agreements contain the following statement:

> I, the undersigned am individually responsible for our labor relations with the Chicago District Council of Carpenters and *am not represented therein by the Chicago Metropolitan Home Builders Association.* [Emphasis supplied.]

Where, as here, there is dispute as to the appropriateness of a multiemployer unit, the Board has considered the following factors as militating against a finding that such unit is appropriate even though there has been some bargaining with respect to such unit: (1) The fact that such bargaining was preceded by a long history of single-employer bargaining that; (2) such multiemployer bargaining has been of relatively brief duration; (3) it did not result in a written contract of any substantial duration; and (4) was not based on any Board unit finding.[8]

Even if we accept the Petitioner's contention that it negotiated with the Union on a multiemployer basis for about 2½ years before the instant petition was filed, it is clear that such negotiations were not based on any Board unit finding, were preceded by a long contractural history [9] which was inconsistent with bargaining on a multiemployer basis through the Petitioner, and have not resulted in the execution of any written contracts.

Moreover, the Board has consistently held that an essential basis for any finding that a multiemployer unit is appropriate is that the individual employers unequivocally manifest a desire to be bound in future collective bargaining by group rather than individual action.[10] Here, however, the most recent action of the Petitioner's members in the area of collective bargaining has been to sign individual contracts with the Union, which contracts in terms repudiate the Petitioner as their bargaining representative. Even if it be true, as Petitioner asserts, that such contracts were obtained by the Union through the exertion of economic pressure, we cannot say, in the face of these contracts, executed after the instant petition was filed, that the Petitioner's members have unequivocally demonstrated their desire to be bound by group rather than individual action.[11]

For all these reasons, we find that the multiemployer unit in which Petitioner seeks an election is inappropriate, and we will therefore dismiss the petition.

[The Board dismissed the petition.]

[8] E. g., *Central Optical Co., Inc.*, 88 NLRB 416, 419; *The Van Inderstine Company*, 95 NLRB 966, 968; *Jerry Fairbanks, Inc.*, 93 NLRB 898, 899; *Miron Building Products Co.*, 116 NLRB 1406, 1407–1408; *Highway Transport Association, etc.*, 116 NLRB 1718, 1720.

[9] As stated above, this contractual history consisted of the adoption by many of the employers who are now members of Petitioner of a master contract negotiated by Builders Association, with which they are not affiliated.

[10] *Pacific Metals Company, Ltd., et al.*, 91 NLRB 696, 699, and cases there cited; *P. E. Ashton Company, et al.*, 93 NLRB 1286, 1288; *Chester H. Harper, et al.*, 117 NLRB 1031.

[11] See: *J. C. Penney Company, Inc.*, 97 NLRB 243.