

Thos. & Geo. M. Stone, Inc. and Local 28, Newark Photo-Engravers Union, Petitioner

Modern Engraving & Machine Co. and Local 28, Newark Photo-Engravers Union, Petitioner

International Engraving Corporation and Local 28, Newark Photo-Engravers Union, Petitioner

Roll-Tex Die Co., Inc. and Local 28, Newark Photo-Engravers Union, Petitioner

Unity Engravers, Incorporated and Local 28, Newark Photo-Engravers Union, Petitioner. *Cases Nos. 22-RC-59, 22-RC-60, 22-RC-61, 22-RC-62, and 22-RC-63. April 16, 1958*

DECISION AND DIRECTION OF ELECTION

Upon separate petitions duly filed under Section 9 (c) of the National Labor Relations Act, a consolidated hearing was held before Clement P. Cull, 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 these cases to a three-member panel [Chairman Leedom and Members Bean and Fanning].

Upon the entire record in these cases, the Board finds:

1. As to all the Employers herein¹ except the Employer in Case No. 22-RC-62, hereinafter called Roll-Tex, the parties agree, and we find, that they are engaged in commerce within the meaning of the Act, and that it will effectuate the policies of the Act to assert jurisdiction over their operations. As to Roll-Tex, the record discloses that the Employer in Case No. 22-RC-61, International Engraving Corporation, herein called International, which is engaged in the manufacture of engraved rollers at its plant at Cedar Grove, New Jersey, decided at an undisclosed date not to buy dies from "outside sources." A competent diecutter was found but he would work only as the head of a separate company. Roll-Tex was therefore organized, in 1956, not to make profits but as a necessary adjunct to International's business. The diecutter became the president and a director of Roll-Tex; its other four officers and directors are also the officers of International. Each of these five persons owns one-fifth of the capital stock of Roll-Tex and together they thus own all

¹ The names of some of them appear herein as corrected at the hearing.

For reasons set forth below, the motions of the Employer and Friendly Society of Engravers and Sketchmakers, hereinafter called the Intervenor, to dismiss the petition in Case No. 22-RC-62 on jurisdictional grounds; to dismiss all the petitions on contract bar grounds; and to dismiss the petition in Case No. 22-RC-63 because that Employer had no employees, are hereby denied.

its stock. Roll-Text is engaged solely in cutting dies for International, for which the latter furnishes the steel. They are both located on the same premises and International pays Roll-Text weekly for the worktime of Roll-Text's approximately two employees. Roll-Text has no other income. Although Roll-Text has no collective-bargaining agreement with any labor organization, it has since its organization abided by the terms of International's contracts with the Intervenor.²

In view of all the foregoing circumstances, including the reason for the organization of Roll-Text, the common officers, location, and labor policy of International and Roll-Text, the ownership of 80 percent of Roll-Text's stock by officers of International, and the fact that Roll-Text works only for International and receives its only income from that company, we find that the operations of International and Roll-Text are sufficiently integrated to constitute them a single Employer within the meaning of the Act. As International during the past calendar year shipped goods valued at more than \$200,000 to points outside New Jersey, we find that the single Employer, comprising International and Roll-Text, is engaged in commerce and that it will effectuate the policies of the Act to assert jurisdiction over its operations.³ In sum, therefore, we shall assert jurisdiction over all the Employers herein.

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

3. The Employers and the Intervenor contend that current contracts between the Employers and the Intervenor, covering employees involved herein, constitute a bar to this proceeding. The Petitioner contends that these contracts are premature extensions of previous contracts and therefore do not constitute a bar. On December 1, 1955, all the Employers, except Roll-Text, which was not organized until 1956, entered into separate contracts, covering employees involved in this proceeding, effective for 2 years. On or about June 28, 1957, three of the Employers, International, Modern Engraving & Machine Co., herein called Modern, and Thos. & Geo. M. Stone, Inc., herein called Stone, and the Intervenor entered into a memorandum agreement, providing, among other things, for increases in wages, and extending their contracts from December 1, 1957, to June 30, 1959. About a week later, following a strike, the Employer in Case No. 22-RC-63, Unity Engravers, Incorporated, herein called Unity, and the Intervenor entered into a similar agreement. Subsequently, International, Modern, Stone, and Unity and the Intervenor entered into separate and more detailed contracts, "formalizing" the memorandum

² As noted below, the other Employers involved herein have had similar contracts with the Intervenor.

³ *The T. H. Rogers Lumber Company*, 117 NLRB 1732, 1735.

agreements. Thereafter, on September 26, 1957, the instant petitions were filed.

The Employer and the Intervenor contend that the premature extension doctrine should not be applied here, on the grounds, in substance, that (1) the extended contracts were negotiated in good faith; (2) the employees concerned accepted the benefits provided in these contracts; and (3) they received higher rates of wages under them than they would have received if new contracts had not been negotiated until a later date. We find no merit in these contentions. The Board has consistently held that, in the application of the Board's premature extension doctrine, the question of good faith in executing such extension is not determinative of the issue;⁴ nor do the economic considerations detailed above affect the applicability of this doctrine.⁵

As the petitions herein, although filed after the extension agreements had been executed, were nevertheless timely filed with respect to the expiration dates of the original contracts, we find that no contract bar exists to a present determination of representative. Accordingly, we find that questions affecting commerce exist concerning the representation of employees of the Employers within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The Petitioner seeks a single multiemployer unit, including employees of all the Employers or, in the alternative, separate units including employees of each Employer. The Employers and the Intervenor contend that only such separate units are appropriate. The parties further disagree as to the unit placement of certain individuals, who are discussed below.

All the Employers and the Intervenor have engaged in formal collective bargaining for a number of years. From about 1940 to 1953, the Employers then in existence negotiated separately with the Intervenor and entered into separate contracts with it. In about 1953, International was organized, and since then the Employers have met together jointly for the purpose of negotiating with the Intervenor. In 1953 and, as described above, in 1955 and 1957, the Employers and the Intervenor executed separate contracts which were, however, substantially alike in each year. Although Roll-Tex, which came into being in 1956, has not participated in the recent bargaining, it has, as noted, adopted International's last two contracts with the Intervenor.

As to all the Employers, except Roll-Tex, we find that, since 1953, the pattern of bargaining has been multiemployer in nature.⁶ As all the Employers negotiated with the Union as a group, and as they did, in practice, execute substantially similar contracts, the fact that no

⁴ *International Minerals & Chemical Corporation (Potash Division)*, 113 NLRB 53.

⁵ *Continental Can Company, Inc.*, 119 NLRB 1851.

⁶ *Cody Distributing Company*, 113 NLRB 863.

single individual was authorized to negotiate for all the Employers and the further fact that each reserved the right to negotiate for itself are not controlling and do not justify a finding that separate units are appropriate.⁷ Furthermore, none of these Employers has evinced an unequivocal intent to pursue a course of individual action with regard to its labor relations. We therefore believe that the above bargaining history is controlling in determining the appropriate unit in this proceeding,⁸ and find appropriate a multiemployer unit including employees of all these Employers. As to Roll-Tex, that it has adopted International's contracts is not alone a sufficient reason for including its employees in the multiemployer unit.⁹ However, based on the circumstances detailed in paragraph numbered 1, above, we have found that the operations of Roll-Tex and International are sufficiently integrated to constitute them a single Employer. For similar reasons, we find that the employees of Roll-Tex are, for unit purposes, indistinguishable from the employees of International and have to all intents and purposes been part of the multiemployer unit found appropriate for International's employees.

The Employer and the Intervenor would include Unity's officers in the appropriate unit. The Petitioner would exclude them as supervisors.

Unity has 5 officers—a president, 2 vice presidents, a treasurer, and a secretary. They constitute its board of directors and own in equal parts all its stock. They also constitute its entire work force at this time. As all of them are officers and stockholders of Unity, they have special status which allies their interests with those of Unity, and we therefore exclude them from the unit as managerial employees.¹⁰

Upon the entire record in these cases, 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 employees employed by Thos. & Geo. M. Stone, Inc.; Modern Engraving & Machine Co.; International Engraving Corporation; Roll-Tex Die Co., Inc.; and Unity Engravers, Incorporated, at their engraved roller and steel die plants located at Newark, Hillside,

⁷ *Atlas Storage Division, P & V Atlas Industrial Center, Inc.*, 100 NLRB 1443.

⁸ *Cody Distributing Company*, *supra*.

⁹ *Colonial Cedar Company, Inc.*, 119 NLRB 1613.

¹⁰ Cf. *Local 140, United Furniture Workers, etc. (Brooklyn Spring Corporation et al.)*, 113 NLRB 815.

At the hearing, the Employer and the Intervenor contended that the petition in Case No. 22-RC-63, relating to Unity, should be dismissed on the ground, in substance, that, if the Board excluded Unity's officers from the unit, Unity would then, because of the layoffs described in paragraph 5, below, have no employees eligible to vote in the election. We find no merit in this contention. There is no evidence in the record that Unity intends to go out of business or that it does not intend in the future to hire more employees in the classifications included in the unit. The present lack of employees appears to be temporary and dependent on business conditions. Cf. *Commercial Equipment Company, Inc.*, 95 NLRB 354, 357, 358, and cases cited therein.

Cedar Grove, and Kenilworth, New Jersey, including diecutters, clampers, machine engravers, and their apprentices, but excluding office clerical employees, truckdrivers, maintenance employees, grave workers, salesmen, guards, the officers of Unity Engravers, Incorporated,¹¹ and all supervisors as defined in the Act.

5. About a month before the hearing, Unity for economic reasons laid off six employees. They all received severance pay in accordance with the contract between Unity and the Intervenor. At the time of the hearing, five of them were working in the appropriate unit for other Employers involved herein. As they will therefore be eligible to vote in the election, if they otherwise satisfy the requirements of our direction of election, we find it unnecessary to consider further their voting eligibility. As to the remaining laid-off employee, we find that he does not have a reasonable expectancy of reemployment within the appropriate unit in the foreseeable future, and we therefore find him ineligible to vote in the election.

[Text of Direction of Election omitted from publication.]

¹¹ Except as to these persons, there is no dispute as to the specific categories to be included and excluded.

George K. Garrett Company, Inc. and United Steelworkers of America, AFL-CIO, Petitioner. *Case No. 4-RC-3525. April 16, 1958*

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Pursuant to a stipulation for certification upon consent election entered into by the parties on December 6, 1957, an election by secret ballot was conducted on December 17, 1957, among the employees at the Employer's Philadelphia, Pennsylvania, plant, under the direction and supervision of the Regional Director for the Fourth Region. At the conclusion of the election, the parties were furnished with a tally of ballots which shows that of approximately 500 eligible voters, 485 cast ballots, of which 242 were cast for the Petitioner, and 241 were cast against the Petitioner.¹

On December 23, 1957, the Employer filed timely objections to the election, contending that the Board's representative erroneously failed to "void and disallow" the ballot of Robert Garrett, and also failed to count an allegedly valid ballot. Thereafter, the Regional Director conducted an investigation, and on February 13, 1958, issued and

¹ Two ballots are listed in the Regional Director's report and recommendations as "challenged" ballots. These are the same ballots which were made the subject of the Employer's objections, and which are discussed in the text, *infra*.