

ness only if such international union or intermediate body is a party signatory to the contract

e *Conclusions*

As we have found that the current contract with the Employer is not a bar because of a schism, we 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, and we shall therefore direct an immediate election <sup>22</sup>

4 The parties agree that the existing unit as described in the contract is appropriate. Accordingly, we find that all production and maintenance employees and teamsters at the Employer's Hershey, Pennsylvania, plant, the Lebanon Creamery, and branch milk-receiving stations, excluding office employees, executives, attorneys, traveling and outside salesmen, engineers, professional employees, watchmen, guards, superintendents, supervisors, foremen, assistant foremen, all other supervisors as defined in the Act, or any persons excluded by law, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act

[Text of Direction of Election omitted from publication]

MEMBER JENKINS, dissenting in part

Since I believe the only issue raised in a "schism" conflict to be that of the identity of the true bargaining agent I would limit the choice on the ballot to the two contending factions. I would not confuse this issue by permitting the intervention of third parties or rejection of the bargaining agent.

<sup>22</sup> As there is no evidence that any of the assets of BCW Local 464 have been disbursed to the advantage of ABC Local 464, we find no merit in the contention of BCW that no election should be held until pending litigation involving such assets has been concluded. *The Great Atlantic and Pacific Tea Company*, 120 NLRB 656, footnote 10

**American-Marietta Company<sup>1</sup> and United Steelworkers of America, AFL-CIO, Petitioner<sup>2</sup>**

**American-Marietta Company, Petitioner and United Mine Workers of America, District 50, Region 16 and United Steelworkers of America, AFL-CIO. Cases Nos 6-RC-2142<sup>3</sup> and 6-RM-157. September 18, 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

<sup>1</sup> The name of the Employer appears as amended at the hearing

<sup>2</sup> Herein called the Steelworkers

<sup>3</sup> United Mine Workers of America, District 50, Region 16, herein called the Mine Workers, intervened in Case No 6-RC-2142 on the basis of a showing of interest

Charles H. Weintraub, 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 [Members Rodgers, Jenkins, and Fanning].

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 claim to represent certain employees of the Employer.

3. 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.

4. The Steelworkers and the Mine Workers both seek to represent the production and maintenance employees at both the Employer's Bridgeville and Neville Island, Pennsylvania, plants. The Mine Workers contend that the only appropriate unit is a combined unit of the production and maintenance employees at both plants, while the Employer and the Steelworkers contend that separate units for each plant are appropriate.

The Employer's district manager testified that: The 2 plants have always been considered by the Employer as separate units; each plant handles its own hiring and firing; the 2 plants have separate payrolls; they have never interchanged employees; each has its own plant manager, plant superintendent, and hierarchy of foremen; there is no seniority policy common to both plants; and the 2 plants are a distance of approximately 20 to 25 miles from each other. He also testified that whereas the Bridgeville plant is a machine plant operation, the Neville plant is a cast operation. Moreover, there is no bargaining history on a two-plant basis. In view of the foregoing, we find that a single overall unit of production and maintenance employees is not appropriate, but that the employees of each plant properly constitute a separate appropriate unit.<sup>4</sup>

We find that the following employees of the Employer constitute separate appropriate units for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

(a) All production and maintenance employees at the Employer's Bridgeville, Pennsylvania, plant, excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act.

(b) All production and maintenance employees at the Employer's Neville Island, Pennsylvania, plant, excluding office clerical em-

<sup>4</sup> *Rheem Manufacturing Co.*, 112 NLRB 52.

ployees, professional employees, guards, and supervisors as defined in the Act.

5. The Steelworkers and the Mine Workers contend that employees in a laid-off status at both plants are only temporarily laid off and eligible to vote. The Employer contends that these employees have been permanently laid off and are ineligible to vote. The Employer's district manager testified that while there are seasonal layoffs in the concrete products industry, this has not occurred in the 2 plants in question for the 2 previous seasons; and that the seasonal decrease in business normally occurs in the late fall, whereas the present layoff was motivated by general business conditions, which conditions show no indication of change in the near future to justify the reemployment of these employees.

At the Bridgeville plant 7 employees were laid off recently, and the Employer testified that 7 more were to be laid off during the week following the hearing. He also testified that there might be an independent seasonal layoff in the fall which would only be temporary.

At the Neville Island plant about 32 employees have been laid off since April 15, 1958. The Employer's district manager testified that the majority of these employees were laid off because of the completion of an exceptionally large order of sewer pipe, and the possibility of obtaining a comparable order is extremely remote; and that the remaining employees were laid off because of general business conditions. And, as at the Bridgeville plant, a seasonal decrease in business may necessitate a temporary layoff in the fall in addition to the present layoff.

Although the Employer indicated that should conditions warrant, the laid-off employees from both plants would be recalled, there appears to be no reasonable expectancy of their recall in the near future. Accordingly, we find that the employees in a laid-off status, including the seven additional employees at Bridgeville, if they have been laid off as expected, are not eligible to vote in the election.<sup>5</sup>

[Text of the Direction of Election omitted from publication.]

<sup>5</sup> See *Brown-Forman Distillers Corporation*, 118 NLRB 454.

**United Stone and Allied Products Workers of America, Local No. 24, AFL-CIO, and Harold Etchison, Its Agent and Gibsonburg Lime Products Company.** *Case No. 8-CB-248. September 19, 1958*

#### DECISION AND ORDER

On April 9, 1958, Trial Examiner Arthur Leff issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent  
121 NLRB No. 122.