

for the employees sought by the Petitioner. However, 24 members of the Employer appeared at the hearing in the role of "interested parties" to protect their rights and to litigate such questions as the alleged craft and supervisory status of the patternmakers.

The Petitioner contends that the only appropriate unit consists of all patternmakers employed by all member firms of the Employer. In support of its contention, the Petitioner points to the authority contained in the Employer's constitution and bylaws, and the Employer's past practice of bargaining for all other employees on a multiemployer basis. However, any authority the Employer might have possessed to negotiate and execute collective-bargaining agreements was clearly nullified insofar as patternmakers are concerned by the members' replies to the Employer's letter of June 10, 1959. It is well settled that a history of multiemployer bargaining for other employees does not establish a multiemployer unit as the only appropriate unit for previously unrepresented employees in a different category.¹ As it is clear in this case that the members of the association have not authorized the Employer to bargain on their behalf as far as patternmakers are concerned, and, indeed, are opposed to such bargaining for their employees, we find that the multiemployer unit sought by the Petitioner is inappropriate.² Accordingly, we shall dismiss the petition.

[The Board dismissed the petition.]

MEMBERS RODGERS and JENKINS took no part in the consideration of the above Decision and Order.

¹ See *Macy's San Francisco, and Seligman & Latz, Inc., jointly*, 120 NLRB 69, 72.

² Cf. *Independent Motion Picture Producers Association, Inc.*, 123 NLRB 1942

**Florida Power and Light Company and Robert J. Pickens
International Brotherhood of Electrical Workers, AFL-CIO
and Robert J. Pickens**

**Local 759, International Brotherhood of Electrical Workers,
AFL-CIO and Robert J. Pickens. Cases Nos. 12-CA-709, 12-
CB-223, and 12-CB-224. March 7, 1960**

DECISION AND ORDER

Upon charges filed on January 8, 1959, and April 7, 1959, by Robert Jones Pickens, an individual, the General Counsel for the National Labor Relations Board, herein called the General Counsel, by the Regional Director for the Twelfth Region, issued a complaint dated April 28, 1959, against Florida Power and Light Company, herein called the Respondent Company, and the International Brotherhood of Electrical Workers, AFL-CIO, and its Local No.

759, herein called the Respondent Unions, alleging that the Respondent Company had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a) (1), (2), and (3) and Section 2(6) and (7) of the National Labor Relations Act and that the Respondent Unions had engaged in and were engaging in unfair labor practices affecting commerce within the meaning of Section 8(b) (1) (A) and (2) and Section 2(6) and (7) of the Act. On the same day, the Regional Director issued an order consolidating the cases and noticing them for hearing. Copies of the complaint, charges, and notice of hearing were duly served upon Respondents and the charging individual.

With respect to the unfair labor practices, the complaint alleges, in substance, that the Respondent Company and Respondent Unions are parties to a collective-bargaining agreement containing a provision which delegates to the Respondent Unions ultimate control over the seniority standing of Respondent Company's employees, who transfer from one department to another. On or about May 8, 1959, the Respondents filed answers denying that the facts alleged in the complaint constitute violations of the Act.

Thereafter, on June 10, 1959, the parties signed stipulations whereby they agreed that the Board may find as true and correct the facts contained in a "Stipulation of Facts," that the parties waived a hearing, the issuance of an Intermediate Report, and a proposed Decision and Order of the Board; and that the Board may make findings of fact and conclusions of law, and may issue its Decision and Order based thereon, as if the same facts had been adduced in open hearing before a duly authorized Trial Examiner of the Board. The parties to the stipulations further requested permission to file briefs with the Board on or before July 1, 1959, and agreed that the entire record of the proceedings shall consist of the stipulations, the order consolidating cases and notice of hearing, copies of the complaint, charges, answers, and the "Stipulation of Facts."

By an order issued June 30, 1959, the Board approved the aforesaid stipulations and made them part of the record herein and transferred the proceedings to, and continued them before, the Board. Subsequently, the General Counsel, the Respondent Company, and the Respondent Union filed briefs.

Upon the basis of the aforesaid stipulations and the entire record in the case, including the briefs filed by the parties, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT COMPANY

The Respondent Company, a Florida corporation, is engaged in the business of generation, distribution, and sale of electric power in the

State of Florida. In the 12-month period ending June 1959, the Respondent Company did a gross volume of business in excess of \$250,000 and during the same period purchased goods and materials originating outside the State of Florida valued in excess of \$50,000.

The Respondent Company concedes, and we find, that it is engaged in commerce within the meaning of the Act.

II. LABOR ORGANIZATIONS INVOLVED

The Respondent Unions are labor organizations within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

From August 28, 1953, to February 11, 1959, the Respondent Company and the Respondent International, on behalf of its 11 local unions, were parties to a collective-bargaining contract. On February 11, 1959, the parties executed a new contract effective to September 30, 1960. Both contracts contained the following provision which reads, in pertinent part:

Article II, Seniority—Promotion—Lay-Off—Discharge

Paragraph 19(a)

Transfers may be made without loss of seniority between departments (as defined in Paragraph 15) by mutual consent between the Company and the particular Local Unions involved . . . In event a Local Union does not reply on request for approval of transfer within thirty (30) days after receipt of such request, it will be construed as having been approved, however, if no application is received from a qualified employee within a particular department (as defined in Paragraph 15) then applications shall be considered in accordance with the established job posting procedure from other departments covered by this Agreement, and if a job is filled in this manner, the employee transferring shall transfer his full seniority rights to the department to which he transfers.

On December 11, 1958, the parties executed an interpretation of paragraph 19(a) as follows:

In case of any employee transferring from one Department to another, the language

by mutual consent between the Company and the particular Local Unions involved

means his seniority would not be transferred if any one Local Union voted to disapprove such transfer of seniority. This language also gives the Company the right to disapprove any such transfer of seniority.

Robert J. Pickens the Charging Party, had been employed in the gas department of Respondent Company since 1947. Following negotiations for the sale of its gas properties to the Houston Gas Corporation which began in 1956,¹ Pickens transferred to the Company's production department on April 5, 1958. On April 18, 1958, Pickens requested that his seniority of 11 years accumulated in the gas department be transferred to the production department, in accordance with the above cited paragraphs. The Company agreed to Pickens' transfer of seniority, but upon referral to the 11 Local Unions involved, 5 of them declined to permit such transfer. On August 22, Pickens requested reconsideration, the Company again agreed, and this time four of the five Locals which had hitherto declined to give their consent also approved the seniority transfer. Respondent Local 759, alone, refusal to give its consent. Pickens thereafter filed a written appeal with the Respondent International Brotherhood of Electrical Workers, which appeal was denied. As a result of this action, Pickens' seniority standing in the production department does not reflect his overall company service in the gas department.

The General Counsel contends that based upon the Board's *Pacific Intermountain Express Company* doctrine² paragraph 19(a) constitutes an unlawful delegation of control to the Unions over seniority in violation of the Act because the requirement of union consent before seniority can be transferred creates a situation where one or more Unions by the use of their veto power can ultimately determine whether such transfer can be made. The Respondent Company and Respondent Unions argue that the Board's decision in the *North East Texas* case³ is squarely in point and is dispositive of the issue raised herein. In that case, the contract contained, *inter alia*, the following clause:

Section 4: Terminal seniority shall prevail except where all Local Unions and a Company involved mutually agree otherwise.

The Board found that the above section 4 was not unlawful because "it does not delegate to the union the authority to control employee seniority."

The General Counsel would distinguish the *North East Texas* case from the instant one on two grounds. First, he asserts that although the disputed paragraph 19(a) gives the Company the power to veto a seniority transfer request, the decision of the Company is not, or at least does not have to be, a final one and therefore mutual consent is not really required. In this regard, he points to the grievance and arbitration clause of the contract (article IV, clause 26) which provides that any employee may file a grievance in connection with "any

¹ On August 28, 1958, the sale of the gas properties was consummated.

² 107 NLRB 837, *enfd.* as modified 225 F. 2d 343 (C.A. 8).

³ *North East Texas Motor Lines, Inc.*, 109 NLRB 1147.

type of supervisory conduct which unjustly denies [him] his job or any benefit arising out of his job . . .” On the other hand, the General Counsel notes that all parties agree that there is no appeal of any kind provided for in the contract from a union decision regarding seniority transfer.

We find this contention of the General Counsel lacking in merit. In our opinion, the Unions’ control over the Company’s vote is, at most, a very remote and tenuous one. Thus, if the Company declines to approve, but the Unions agree to a seniority transfer, and the grievance procedure is thereafter invoked, the following occurs: the parties must go through three steps in which only their representatives are involved before they reach the arbitration stage; then in order for the Unions’ desire to prevail, they must obtain the vote of the third member whose selection has either been agreed upon by the Company or has been made by the impartial American Arbitration Association. In these circumstances, we believe contrary to the General Counsel that the practicalities of the situation are such as that the Company’s veto power is, in substance, preserved.

The General Counsel’s second basis for distinguishing the *North East Texas* case is that there the parties had agreed on terminal seniority as a standard for disposing of all terminal seniority issues, and any deviation from such standard required the assent of the union and the company. He asserts that the union, itself, was wholly without power to deviate from the standard set forth in the contract. In other words, the rights of the employee obtained under the standard could not be adversely affected except by mutual or joint action of the contracting parties. However, according to the General Counsel in this case, “the disposition of the employee’s request to transfer his seniority is not by mutual or joint consent of the parties embodied in a uniform standard or policy embodied in the contract.” For, the contract presents only one uniform policy, i.e., giving to the Unions “the absolute, final power to determine seniority standing after an interdepartmental transfer.” Accordingly, in his view, the contract creates no right in the employee and necessarily encourages membership in the Unions, which have the power to adversely affect the seniority standing of the employee.

We find the General Counsel’s second ground likewise without merit. Thus, paragraph 15(b) states, in pertinent part, that “[f]or the purpose of determining seniority, departmental seniority shall control in the three departments: namely, Transmission-Distribution, Production and Gas. . . .” And, as heretofore indicated, paragraph 19(a) provides for interdepartmental seniority when and if the Company and all the Local Unions involved mutually agree. Therefore—in almost the very words used by the General Counsel to distinguish the *North East Texas* case—the parties have agreed on departmental

seniority as a standard for disposing of all departmental seniority issues, and any deviation from such standard requires the assent of the Unions and the Company; the Unions themselves are wholly without power to deviate from the standard set forth in the contract; the rights of the employee obtained under the contract cannot be adversely affected except by mutual or joint action of the contracting parties.⁴

In this regard, we consider very persuasive the reasons advanced by the Respondent Company and Respondent Unions for requiring mutual consent before interdepartmental transfers are permitted. Thus, they observe that in the utility business, departmental seniority, as provided in the contract, is the fairest method, because entirely different qualifications are required in different departments. Therefore, if an employee leaves his job in one department for another, he becomes, in effect, a new employee for seniority purposes. Consequently, they argue that when an employee assumes new duties in an entirely separate department, it is only fair that the employees of that department be permitted, through their authorized representative, limited authority to approve the individual's transfer of enhanced status. In their view, the very nature of the subject matter makes it particularly appropriate to provide that only by mutual consent can seniority be transferred. They note that the sphere within which the Unions may use their power is a narrow one; their power is not to compel but only to forbid and then only to forbid a deviation from the normal which is departmental seniority. We cannot say, as the General Counsel would have us do, that under these circumstances the Unions do not have a substantial and valid interest in the subject of interdepartmental seniority or that the extent to which they were permitted to participate under this contract was unlawful.⁵

CONCLUSIONS OF LAW

By entering into and maintaining an agreement containing a provision whereby transfers of departmental seniority may be made by mutual consent of the parties, the Respondent Company has not engaged in and is not engaging in unfair labor practices within the

⁴ The General Counsel also relies upon the Board decisions in *Theo Hamm Brewing Co. and Pfeiffer Brewing Co.*, 115 NLRB 1157, and *Gibbs Corporation*, 120 NLRB 1079, as support for his position that there has been an unlawful delegation here of control to the Unions over seniority. We find these cases to be distinguishable from the instant one. Here, as we have found above, under the terms of paragraph 19(a) the Company also has control. Indeed, the paragraph provides for the Company's right to deny a request for seniority transfer, in which event, the fact that all or any of the Unions might consent, would not avail.

⁵ Member Bean agrees that the collective-bargaining representative of a unit into which an employee is to be transferred with seniority acquired in another bargaining unit is properly concerned with such transfer as being within the scope of its duty to protect the interests of the employees it represents. As this was the case herein, Member Bean concurs in the dismissal of the complaint without reaching the question whether other labor organizations which are joint parties to a collective-bargaining agreement may, under its terms, be granted veto powers over transfers of seniority not directly concerning the employees in the units represented by them.

meaning of Section 8(a) (1), (2), and (3) of the Act, and the Respondent Unions have not engaged in and are not engaging in unfair labor practices within the meaning of Section 8(b) (1) (A) and (2) of the Act. Accordingly, we shall dismiss the complaint.

[The Board dismissed the complaint.]

MEMBER RODGERS took no part in the consideration of the above Decision and Order.

Utah Plumbing and Heating Contractors Association and its Members and Local Unions 19, 57, 348 and 466 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO. *Case No. 20-CA-1670. March 7, 1960*

DECISION AND ORDER

On October 6, 1959, Trial Examiner William E. Spencer issued his Intermediate Report in the above-entitled proceeding finding that the Respondent had engaged in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report.

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 Bean and Jenkins].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the entire record in this case, including the Intermediate Report and the exceptions thereto, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Utah Plumbing and Heating Contractors Association and its Members, their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Local Unions, 19, 58, 348 and 466 of the United Association of Journeymen and Apprentices of the