

Act and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

5. The Respondent has not engaged in unfair labor practices by attempting to have employees leave the plant by an exit which would prevent them from coming into contact with union organizers known to be in the area.

[Recommendations omitted from publication.]

Kolker Chemical Corporation¹ and Paint, Varnish & Allied Products, Local Union #1310, B. of P.D. & P. of A., AFL-CIO,² Petitioner

Kolker Chemical Corporation and International Union of Operating Engineers, Local 68, AFL-CIO,³ Petitioner. *Cases Nos. 22-RC-983 and 22-RC-992. March 16, 1961*

DECISION, ORDER, AND DIRECTION OF ELECTIONS

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

Upon the entire record in these cases, 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.⁴
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. In Case No. 22-RC-983, the Painters seeks a unit of production and maintenance employees at the Kolker Chemical Corporation⁵ plant. The Employer agrees that a production and maintenance unit

¹ The name of the Employer appears as amended at the hearing.

² Herein called Painters.

³ Herein called Operating Engineers.

⁴ On December 9, 1960, subsequent to the close of the hearing, District 50, United Mine Workers of America, herein called District 50, filed a petition in Case No. 22-RC-1071, seeking to represent the employees here involved. Thereafter, on December 14, 1960, District 50 moved to intervene in these proceedings, alleging that it received notice of the hearing. As we are administratively satisfied that District 50's card showing is both adequate and timely for the purposes of intervention, the motion to intervene is granted. Accordingly, as District 50 indicated it desired to withdraw its petition upon the granting of its motion, we shall dismiss the petition in Case No. 22-RC-1071.

⁵ Hereinafter referred to as Kolker.

is appropriate, but contends that any such unit should also include the employees of Doremus Chemical Works, Inc.,⁶ a subsidiary corporation. In Case No. 22-RC-992, the Operating Engineers seeks a separate unit of boiler firemen at the Kolker plant. The Employer takes the position that these firemen should be included in the overall unit of production and maintenance employees. District 50, the Intervenor, desires to appear on the ballot in any unit or units the Board finds to be appropriate. There is no history of bargaining for either group of employees.

Case No. 22-RC-983: The record shows that Doremus was originally formed as a holding company for the assets of Kolker, but in the fall of 1959 Doremus began the erection of a plant which will produce and supply chlorine to Kolker for the chemical operations of the Kolker plant. Doremus was expected to be operational in December 1960. According to Charles Kolker, executive vice president of both corporations, Doremus will continue operations until July 1, 1961, at which time Doremus will cease to exist as a separate corporate entity and its assets and operations will be assumed by Kolker. The stock of Doremus is now held entirely by Kolker. Both corporations have the same corporate officers and the same business location. Kolker handles all sales, purchases, and financing for Doremus. Although the corporations have separate payrolls, Kolker provides Doremus with a weekly payroll check for its employees. On occasion, employees of Kolker perform duties at the Doremus plant. All employees of both corporations are hired by Kolker and all share the same employee benefits.

In view of the foregoing, we find that Kolker and Doremus constitute a single employer for the purposes of the Act.⁷ Accordingly, we find that a unit comprising employees at both plants is appropriate. As the Petitioner has indicated a desire to go to an election in whatever unit the Board finds appropriate in Case No. 22-RC-983, and as we are administratively satisfied that the Petitioner has an adequate showing of interest in the unit found appropriate, we shall direct an election in that unit.

Case No. 22-RC-992: Only Kolker maintains a powerhouse which is located in a separate building and which also houses certain maintenance employees. However, the powerhouse is physically separated from the rest of the building by firewalls. The firemen are all employed by Kolker, and are licensed boiler-operators. They work on an around-the-clock schedule, performing the usual powerhouse duties. They are under the immediate supervision of the plant engineer, who also supervises the maintenance employees assigned to the building. On occasions, when there are two firemen assigned to a particular

⁶ Hereinafter referred to as Doremus.

⁷ *Dohrmann Commercial Company and Dohrmann Hotel Supply Co.*, 127 NLRB 205.

shift, they are sometimes required to perform various maintenance tasks, i.e., cleaning, painting, and minor repair work. However, all of these duties are performed in the powerhouse proper. The record shows that the firemen have little or no contact with other employees. Accordingly, we find that the firemen form a homogeneous and functionally distinct powerhouse group, such as the Board has held may constitute a separate appropriate unit in the circumstances of this case.⁸

5. The Employer contends that an election should not be conducted in Case No. 22-RC-983 at this time because its operations are in the process of a substantial expansion program. At the time of the hearing, the Doremus and Kolker plants employed some 76 employees in 12 job classifications. The Employer anticipates that by April 1961, it will employ 117 employees in 21 job classifications. We find that the employees employed at the time of the hearing constitute a substantial and representative segment of the complement to be employed in the future, and that an election in Case No. 22-RC-983 at this time would not be premature.⁹

Accordingly, we shall direct elections in the following voting groups of the Employer's employees at the Kolker and Doremus plants in Newark, New Jersey, excluding office clerical employees, laboratory technicians, watchmen, guards, and all supervisors as defined in the Act.

(1) All powerhouse employees at Kolker, excluding all other employees.

(2) All production and maintenance employees at Kolker and Doremus, including shipping and receiving clerks, truckdrivers, and janitors, but excluding all employees in voting group (1).¹⁰

If a majority of the employees in voting group (1) select the Operating Engineers, they will be deemed to have indicated their desire to constitute a separate appropriate unit, and the Regional Director is instructed to issue a certification of representatives to such labor organization for such group, which the Board, under these circumstances, finds to be an appropriate unit for purposes of collective bargaining. However, if a majority in voting group (1) do not vote for the Operating Engineers, the ballots of the employees in such

⁸ *Minnesota Mining & Manufacturing Company (Irvington Varnish and Insulator Company Division)*, 129 NLRB 789.

⁹ *Edward Aaron Corporation*, 125 NLRB 840.

¹⁰ Painters has indicated it does not desire to participate in the separate election among the employees in voting group (1). However, because the employees in this voting group are appropriately a part of the overall group should they reject separate representation, and because they should be afforded an opportunity to decide whether or not they desire to be represented in an overall unit by the Painters, we shall place the Painters on the ballots in voting group (1). In the event the Painters does not desire its name be placed on the ballot in the election in voting group (1), the Regional Director is instructed to dismiss the petition in Case No. 22-RC-983. As District 50 indicated a willingness to proceed to an election in any unit or units found to be appropriate, we shall place this union on the ballot in voting group (1) as well.

voting group will be pooled with those of the employees in voting group (2).¹¹ If a majority of the employees in voting group (2) or in the pooled group, as the case may be, vote for the Painters, or District 50, the Regional Director is instructed to issue a certification of representatives to such labor organization for such group, which the Board, in the circumstances, finds to be a unit appropriate for the purposes of collective bargaining. In all other events, the Regional Director is instructed to issue a certification of results of the elections as appropriate in the circumstances.

[The Board dismissed the petition filed in Case No. 22-RC-1071.]

[Text of Direction of Elections omitted from publication.]

¹¹ If the votes are pooled, they are to be tallied in the following manner: Votes for the Operating Engineers shall be counted as valid votes, but neither for nor against the Painters or District 50. All other votes are to be accorded their face value, whether for representation by the Painters, or by District 50, or by no union. See *Independent Linen Service Company of Mississippi*, 122 NLRB 1002, 1006.

American Aggregate Company, Inc. and Featherlite Corporation and United Stone and Allied Products Workers of America, AFL-CIO.¹ *Cases Nos. 16-CA-1331 and 16-CA-1338. March 17, 1961*

DECISION AND ORDER

On October 18, 1960, Trial Examiner Phil Saunders issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging 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. He also found that the Respondent had not engaged in certain other alleged unfair labor practices and recommended dismissal of the complaint pertaining to such alleged unfair labor practices. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

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 Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, except as indicated below.²

¹ Herein sometimes referred to as the Union.

² In its exceptions, the Respondent complains that the Trial Examiner, in determining whether striker Nowak was offered his old job upon termination of the strike, failed to consider a tape recording of an interview between representatives of the Respondent and Nowak. As the tape recording contained omissions and unintelligible portions, we do not regard it as reliable. Cf. *Walton Manufacturing Company*, 124 NLRB 1331, 1333. We