

its customers would cut down their orders and its business would be adversely affected. We have held that such statements generate fear of economic loss among employees about to vote on the question of self-representation and constitute a basis for setting aside the election results.<sup>7</sup> For these reasons, we adopt the Regional Director's recommendations to sustain the above-discussed objections.

Accordingly, we shall order the election set aside and shall direct that a new one be conducted.

[The Board set aside the election.]

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

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<sup>7</sup> *R. D. Cole Manufacturing Company*, 133 NLRB 1455

**U.S. Mattress Corporation and Restyme Products Incorporated<sup>1</sup> and Bedding Local 140, affiliated with United Furniture Workers of America, AFL-CIO, Petitioner. Case No. 22-RC-1362. February 20, 1962**

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Christopher J. Hoey, 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 McCulloch and Members Leedom and Brown].

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.<sup>2</sup>
2. The labor organizations involved claim to represent certain employees of the Employer.<sup>3</sup>
3. On September 18, 1961, the Petitioner filed a petition, naming U.S. Mattress as the employer, which was served upon Arthur Cohen, president and treasurer of U.S. Mattress, and vice president of Restyme, of which his brother Murray is president. The petition re-

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<sup>1</sup> The Employer's name appears as corrected at the hearing

<sup>2</sup> For the reasons set forth below, we find that U S Mattress Corporation, herein called U S Mattress, and Restyme Products Incorporated, herein called Restyme, constitute a single employer for the purposes of the Act

<sup>3</sup> Teamsters, Production, Maintenance and Allied Workers Local Union No 418, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, was permitted to intervene on the basis of a contract interest

quested a production and maintenance unit of 35 employees, described the employer's establishment as a factory located in Irvington, New Jersey, and its principal product as mattresses. On September 27, the Petitioner filed an amended petition adding the name of Restyme Products to that of U.S. Mattress as the employer. In the meantime, on September 22, Arthur Cohen, acting under authority from his brother, who was out of the country, signed a contract on behalf of Restyme with the Intervenor which Restyme and the Intervenor assert as a bar.

Restyme has been engaged since 1954 in the manufacture of mattresses, box springs, and related items, whereas U.S. Mattress, which was established in 1956, is primarily a seller and jobber of such products. The Restyme personnel is comprised of 37 production and maintenance employees and 3 truckdrivers. U.S. Mattress, which does no manufacturing, has only 1 maintenance man at the Irvington operation as its selling functions are carried on primarily by 12 salesmen who work out of a showroom maintained by U.S. Mattress in New York City. U.S. Mattress deliveries are made in trucks marked "U.S. Mattress Corporation" but driven by Restyme employees, and Restyme employees receive, handle, and maintain materials shipped to U.S. Mattress pursuant to oral contractual arrangements between the two corporations. Although separate payroll records and tax returns are maintained by each corporation, employees of both punch a single timeclock. The two brothers, Arthur and Murray Cohen, and the estate of their deceased sister own virtually all the stock of both corporations. The brothers are also the sole stockholders in another corporation which owns the building in Irvington occupied by both U.S. Mattress and Restyme, and in which they have adjoining offices and share the same facilities including storage space.

The Petitioner asserts that it intended to designate the employees of both corporations in its original petition, but failed to name both through confusion as to the identity of the employer of the employees in question. In view of the interrelated activities of the two corporations at the Irvington location, we find such confusion readily understandable. Moreover, Arthur Cohen testified at the hearing that when the petition was served upon him he read and noted its contents. It is apparent from the contents of the petition that the Petitioner intended to include employees of both corporations in its unit request as the petition made reference to 35 production and maintenance employees, to the establishment involved as a factory, and to its product as mattresses. Accordingly, we find, under all the circumstances of this case, that service of the original petition on Arthur Cohen, at a time when he was representing both corporations in contract negotia-

tions, constituted notice to both corporations,<sup>4</sup> and, therefore, that the Restyme contract which he signed does not constitute a bar.<sup>5</sup>

Accordingly, 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.

4. The parties are in general agreement as to unit composition, but disagree as to scope. The Petitioner, while it indicated a willingness to participate in separate elections, contends that the production and maintenance employees of both corporations comprise a single appropriate unit. U.S. Mattress and Restyme, as well as the Intervenor, contend that the two corporations are separate employers for unit purposes, and U.S. Mattress moved to dismiss the petition as to it on the ground that it has only one employee in the categories sought.

As noted above, Arthur Cohen, who was concluding negotiations with the Intervenor on behalf of both corporations when the original petition was served on him, discontinued negotiations for U.S. Mattress but concluded and executed a contract for Restyme. Prior to that, each of the brothers had negotiated separately with the Intervenor for the corporation of which he was president, and had signed separate contracts. The latest of these contracts, however, were virtually identical. In fact, although U.S. Mattress does not employ any production employees, the contracts of both corporations by their terms covered the same classifications of production employees, and provided the same wages, hours, working conditions, and employee benefits for such employees. Moreover, both contracts had the same 3-year effective period and the same expiration date, October 31, 1961.

On the basis of the factors, set forth in paragraph 3, above, that the two corporations have substantially the same officers and owners, and operate on a closely interrelated basis, including the sharing of some employee functions, equipment, and facilities, we find that they constitute a single employer for unit purposes.<sup>6</sup> The motion to dismiss as to U.S. Mattress is, therefore, hereby denied.

It is also apparent from all the facts that, although separate contracts were executed, this did not result in the establishment of separate bargaining units at the Irvington location. Rather do we find on the basis of the identity of the terms and provisions of the separate

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<sup>4</sup> See *Concrete Joists & Products Co., Inc.*, 120 NLRB 1542; *Esgro Inc. and Esgro Valley, Inc.*, 135 NLRB No 20.

In its brief filed after the hearing, the Employer relies on *The Baldwin Company*, 81 NLRB 927, in support of its contention that the Restyme contract is a bar. That case is distinguishable, however, in that the company in that case which signed the contract in question had not previously been served with a petition indicating that the Petitioner was seeking to represent its employees.

<sup>5</sup> In view of this disposition, we find it unnecessary to pass upon the parties' other contract-bar contentions.

<sup>6</sup> See *Wichita Falls Foundry & Machine Co.*, 132 NLRB 199

contracts, without regard to applicability of the provisions to the corporation signatory thereto, that the separate instruments were merely an accommodation to the Employer's legal structure and that the resulting unit was an overall unit of employees of both corporations at this location. Accordingly, we find that a production and maintenance unit coextensive with the operations of both corporations is appropriate.

We find therefore that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(c) of the Act:

All production and maintenance employees at the Employer's Irvington, New Jersey, operations, including truckdrivers, but excluding all office clerical employees, professional employees, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

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**International Hod Carriers Building and Common Laborers Union of America, Local 840, AFL-CIO and Charles A. Blinne, d/b/a C. A. Blinne Construction Company. Case No. 17-CP-2. February 20, 1962**

### SUPPLEMENTAL DECISION AND ORDER

On February 20, 1961, the Board (Member Fanning dissenting) issued a Decision and Order in this case finding that Respondent Union had engaged in unfair labor practices in violation of Section 8(b)(7)(C) of the Act.<sup>1</sup> Thereafter, on or about April 3, 1961, Respondent Union filed with the Board a motion for reconsideration and for dismissal of the complaint, followed by a memorandum in support of its motion. Respondent Union also requested leave to argue orally before the Board. Neither the Charging Party nor the General Counsel has filed any response to the Union's motion.

The Board has considered the motion, the memorandum in support thereof, and the entire record in the case,<sup>2</sup> and hereby grants the Union's motion insofar as it requests reconsideration. The request for oral argument is denied as the record, including the motion for reconsideration and the memorandum in support thereof, adequately presents the issues and the positions of the parties.

<sup>1</sup> 130 NLRB 587.

<sup>2</sup> Chairman McCulloch and Member Brown have read and considered the transcript of oral argument which preceded the issuance of the February 20 Decision and Order.