

Francis L. Bennett and Harold J. Bennett, partners, d/b/a Bennett Stone Company and International Hod Carriers; Building and Common Laborers' Union of America, AFL-CIO, and Dimensional Stone Quarry Workers, Local 909, a/w International Hod Carriers; Building and Common Laborers' Union of America, AFL-CIO

McNeeley Stone Company, Inc. and/or McNeeley Quarries, Inc. and International Hod Carriers; Building and Common Laborers' Union of America, AFL-CIO, and Dimensional Stone Quarry Workers, Locals 909 and 926, a/w International Hod Carriers; Building and Common Laborers' Union of America, AFL-CIO

Mid-West Quarries Co., Inc. and International Hod Carriers; Building and Common Laborers' Union of America, AFL-CIO, and Dimensional Stone Quarry Workers, Locals 909 and 926, a/w International Hod Carriers; Building and Common Laborers' Union of America, AFL-CIO. Cases Nos. 25-RC-2152, 25-RC-2155, and 25-RC-2156. November 29, 1962

DECISION AND DIRECTION OF ELECTIONS

Upon separate petitions duly filed under Section 9(c) of the National Labor Relations Act, separate and consolidated hearings were held before John W. Hines, hearing officer. The hearing officer's rulings made at the hearings are free from prejudicial error and are hereby affirmed. As these cases are related, involving the same unions and issues, the cases are hereby consolidated for the purpose of decision.

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 [Chairman McCulloch and Members Rodgers and Ledom].

1. The Employers are engaged in commerce within the meaning of the Act.

2. The labor organizations involved claim to represent certain employees of the Employers.¹

¹Local 599, International Association of Machinists, AFL-CIO, herein called the Machinists, and Local 1059, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers, and Helpers, AFL-CIO, herein called the Blacksmiths, intervened in the consolidated cases (25-RC-2155 and 25-RC-2156) for the limited purpose of protecting contracts covering employees they represent. They do not wish to appear on any ballot, involving only quarry employees. Also, International Association of Marble, Slate and Stone Polishers Rubbers and Sawyers, Tile and Marble Setters' Helpers and Marble Mosaic and Terrazzo Workers' Helpers, AFL-CIO, intervened in all cases and requested to be placed on the ballot in any election directed. However, subsequent to the hearing, it requested permission to withdraw for all purposes from the present cases. Its request is hereby granted. By motions filed October 1, 1962, the United Stone and Allied Products Workers of America, AFL-CIO, moved to intervene in the cases involved in this proceeding. However, it failed to submit timely showings of interest. Its motions are, therefore, denied.

3. The Petitioner filed the instant petitions on January 16, 1962, seeking to represent separate units of quarry employees at each Employer's operations. The Employers urge as a bar the separate contracts entered into in July 1960 with Federal Labor Union No. 21469 for a 3-year term, expiring in July 1963, and covering the requested employees. The Petitioner maintains, however, that Union No. 21469 is defunct, that it is the successor to such union, and in effect that under these circumstances an election should be directed in order to assure the requested employees an opportunity to continue being represented by a labor organization.

We find, for reasons urged by the Petitioner, that the separate contracts are no bar. The record shows that in June 1961 the members of Federal Labor Union No. 21469 voted to retire the charter of No. 21469, to terminate the Union's direct affiliation with the AFL-CIO, and to affiliate with the Petitioner. Pursuant to this vote, the charter of Union No. 21469 was returned to the AFL-CIO and canceled. The officers of Union No. 21469 became officers, holding the same offices of the Petitioner, and substantially all members of Union No. 21469 became members of the Petitioner. On June 8, 1961, all books and other property of Union No. 21469 were transferred to the custody and control of the Petitioner, and on July 3, 1961, the Petitioner filed an application for charter membership in International Hod Carriers' Building and Common Laborers' Union of America, which charter was issued on July 12, 1961. It also appears that at the time of the hearing no one was authorized to administer on behalf of Union No. 21469 the June 1960 contracts raised here as a bar to this proceeding and, although that Union was served with official notice of the hearing, no one appeared in its behalf.

In these circumstances we find that Union No. 21469 has become defunct. Accordingly, we further find that its separate contracts with the Employers involved herein do not constitute bars to this proceeding.²

4. The Petitioner would represent in separate, single employer units all quarry employees of the several Employers, excluding from each unit employees presently represented by other labor organizations, office clerical employees, professional employees, guards, foremen, and supervisors as defined in the Act. The Employers contend that the proposed units are inappropriate in both scope and composition.

First, the Employers argue that they are a part of a multiemployer unit represented by the Indiana Limestone Industry Industrial Relations Committee (herein called Committee) and that only a unit

² *Gulf Oil Corporation*, 137 NLRB 544; *Pepsi Cola Bottling Company of Chattanooga, Inc.*, 132 NLRB 1441; *W. H. Nicholson and Company*, 119 NLRB 1412. We need not consider the successorship argument raised by the Petitioner for whether or not it is a successor of Union No. 21469 the contracts are clearly no bar to an election. See, *The Zia Company*, 108 NLRB 1134, footnote 1.

coextensive with the multiemployer group is appropriate. They point out that for a number of years they, together with some 20 other companies, have designated the Committee as their agent for bargaining with the Federated Council, a union group including Union No. 21471 and the intervening unions; and further that they have executed the agreements negotiated by the Committee and Counsel. However, that the Employers may have engaged with other companies in joint bargaining through a common agent does not necessarily establish a multiemployer unit. Under established Board rules, such unit is held to exist only where the evidence establishes that the several employers expressly conferred upon their joint bargaining agent the power to bind them by its negotiations or that the employers have by an established course of conduct unequivocally manifested a desire to be bound in future collective bargaining by group rather than individual action.³

In a recent unfair labor practice proceeding,⁴ the Board had occasion to pass upon the character of the bargaining in effect between the Committee and the Council. In its decision the Board observed that throughout the long history of bargaining between the Committee and the Council neither had, except on two occasions,⁵ the authority to bind members to a collective agreement. Rather the pattern has been for the two organizations to agree on terms, after which their members are polled to secure approval, followed by the signing of individual contracts between the separate companies and unions approving the terms. And in 1960, though consideration was given to creating a more binding arrangement between the Committee and Council nothing was done in this regard, each merely having the authority to represent but not commit its members. Further, the Board pointed out in its decision that although the individual unions and companies usually signed the jointly negotiated agreements there had been a number of instances in which one or the other had refused to do so and, especially since 1954, many instances in which both unions and companies had withdrawn during the course of negotiations. In con-

³ Compare, for example, *Chicago Metropolitan Home Builders Association*, 119 NLRB 1184, where the Board stated: "An essential basis for any finding that a multiemployer unit is appropriate is that the individual employers unequivocally manifest a desire to be bound in future collective bargaining by group rather than individual action" See also, *Northern Nevada Chapter, National Electrical Contractors Association and Represented Employers*, 131 NLRB 550; *American Publishing Corp., et al*, 121 NLRB 115; *Charles H. Harper and Frank Harper, Agents*; *The Baltimore Towage & Lighterage Company, et al.*, 117 NLRB 1031; *York Transfer & Storage Co.*, 107 NLRB 139; and *Pacific Metals Company, Ltd., et al*, 91 NLRB 696. Compare also *Anderson Lithographic Company Inc., et al*, 124 NLRB 920, where the Board stated that ". . . to permit an individual member-employer to qualify or reject an agreement made by the multiemployer group . . . would render the general and widely recognized practice of multiemployer bargaining virtually useless."

⁴ *Indiana Limestone Company, Inc*, 136 NLRB 697.

⁵ In 1955 and 1957, the Committee was given the power to bind its members by its negotiations

clusion the Board found on the record before it that the Respondent Employer was not required to sign the agreement negotiated in 1960 because, in its view the Committee and Council "had negotiated with the understanding that each company . . . had retained the right to withdraw from group bargaining at any time and to approve or reject any agreement reached."⁶ The evidence in the record now before us concerning the 1960 bargaining situation is fully consistent with the foregoing finding made in the *Indiana Limestone* decision, and we regard that finding as to the nature of such bargaining controlling here. Consequently, though most of the companies including the present Employers did sign the jointly negotiated 1960 agreement, we find that they did not thereby constitute a multiemployer unit consisting of such signatories. In the light of the past bargaining practices affecting these employers and the 1960 bargaining situation, as fully described in the cited case and present record, we are satisfied that such group bargaining as took place was for the convenience of the employers and unions involved and was not undertaken with the intention of establishing a multiemployer unit. Accordingly, we find that the proposed units are not inappropriate because they are limited to employees at each Employer's operations.

Second, the Employers contend that the requested units being limited to quarry employees are not proper and that only units including all mill as well as quarry workers are appropriate. However, the Employers have for more than 10 years recognized Union No. 21469 as the representative of units of quarry workers such as Petitioner now seeks, while the intervening unions have been recognized as representatives of various other units of their employees.⁷ Further, the 1960-63 contracts between the Employers and these unions all reflect a continuation of these units which have been extant for some 20 years in the Indiana limestone industry here involved.⁸ The Employers do not argue that the existing units fail to comprise readily identifiable groups of employees.⁹ They contend, instead, that the "multicraft" bargaining of the several unions through their Council shows, and is, in fact, an admission on their part, that separate units do not best serve their members' interest and are, therefore, inappropriate. We find no merit in the argument. The fact that several unions may choose to cooperate in bargaining for convenience, as we have heretofore found, is not evidence that established separate units are inappropriate.

⁶ *Indiana Limestone*, *supra*

⁷ Bennett Stone Company, unlike the other Employers, signed contracts in 1960 with only the Blacksmiths and the Millworkers in addition to its contract with Union No 21469

⁸ See, *Monon Stone Company*, 10 NLRB 64.

⁹ The Employers do contend that certain similarity in work and some interchange of employees between the quarries and mills render the requested units inappropriate. We disagree for it is evident from the record that the mills and quarries are separate operations and that the interchange of employees is not substantial.

Consequently, as the record shows that the requested quarry workers are engaged in work, basically dissimilar, and at locations separate, from the mill employees and in view of the existence over a long period of separate units limited to quarry workers, we find that the requested units are appropriate.¹⁰

In view of the foregoing, we find that the following employees of Bennett Stone Company, Bloomington, Indiana, McNeeley Quarries, Inc., Ellettsville, Indiana, and Mid-West Quarries Co., Inc., Bloomington, Indiana, constitute separate appropriate units for purposes of collective bargaining within the meaning of Section 9(b) of the Act: All employees of each employer engaged in and about its quarry, excluding office clerical employees, foremen, professional employees, all employees represented by other labor organizations, guards, and supervisors as defined in the Act.¹¹

[Text of Direction of Elections omitted from publication.]

¹⁰ See, *Monon Stone Company, supra*.

¹¹ In Case No. 25-RC-2152 the Petitioner requests that employees "who have been," as well as those who are, represented by other unions be excluded from its proposed unit. We have not included such language in the unit description because past representation of employees in some other unit does not warrant their exclusion at this time from the requested unit if they otherwise come within its coverage. Also in Case No. 25-RC-2152, the supervisory status of the quarry foreman and head hooker was questioned. As for the quarry foreman, the record shows he is responsible for the quarry operations and for the work of the employees there employed. Accordingly, we find he is a supervisor. However, there is no evidence showing that the head hooker has authority to hire, discharge, discipline, or responsibly direct the work of, employees or to make effective recommendations affecting the status of employees. Accordingly, we find the head hooker is not a supervisor.

**Local Union 825, International Union of Operating Engineers,
AFL-CIO and Schwerman Co. of Pa., Inc. Case No. 22-CD-54.
November 29, 1962**

DECISION AND DETERMINATION OF DISPUTE

This is a proceeding pursuant to Section 10(k) of the Act following a charge filed by Schwerman Co. of Pa., Inc., herein called Schwerman, alleging a violation of Section 8(b)(4)(D) by Local Union 825, International Union of Operating Engineers, AFL-CIO, herein called Respondent or Operating Engineers. Pursuant to notice a regularly scheduled hearing was held on July 24, 25, 26, 28, 31, and on August 1, 2, 7, and 8, 1961, before Alvin Lieberman hearing officer. All parties appeared at the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. The rulings of the hearing officer made at the hearing are free from prejudicial error and are hereby affirmed. Thereafter, briefs were filed by Schwerman, Operating Engineers,