

**Quality Limestone Products, Inc. and William Metzger and Marvin Wilson, Petitioners and Teamsters Union Local 695 Halquist Lannon Stone Co. and Richard Murphy, Petitioner and Teamsters Union Local 695. Cases Nos. 13-RD-510 and 13-RD-536. June 28, 1963**

### DECISION AND ORDER

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act,<sup>1</sup> hearings were held before Hymen Bear and William D. Boetticher, hearing officers. The hearing officers' rulings made at the hearings 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, Fanning, and Brown].

Upon the entire record in this case the Board finds:

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

2. The labor organization involved claims to represent certain employees of the Employers.<sup>2</sup>

3. No question affecting commerce exists concerning the representation of employees of the Employers within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act for the reasons stated below:

The Petitioners seek to decertify single-employer units of quarry employees, excluding stonecutters, at Quality<sup>3</sup> and at Halquist. The Employers also assert that single-employer units are appropriate. The Union contends that only a multiemployer unit is appropriate.

The Union was certified in 1953 as the bargaining representative in a single-employer unit of the inside quarry employees of Halquist, excluding stonecutters. There has been no Board certification among the employees of Quality.<sup>4</sup> While the record does not indicate the date on which each of these Employers joined "Wisconsin Dimension

<sup>1</sup> By order of the Regional Director for the Thirteenth Region, dated January 8, 1963, the above-captioned cases were consolidated.

<sup>2</sup> The Petitioners assert that Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees, and Helpers Union, Local No. 695, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, the currently recognized representative of the employees of Quality Limestone Products, Inc., herein called Quality, and the certified and currently recognized representative of the employees of Halquist Lannon Stone Company, herein called Halquist, is no longer their representative as defined in Section 9(a) of the Act. The name of the Union appears as corrected at the hearing.

<sup>3</sup> In view of our disposition herein, we do not reach the question whether single-plant units or a multiplant unit of Quality employees is appropriate.

<sup>4</sup> On October 24, 1955, the Wisconsin Employment Relations Board issued a "Direction of Referendum" for an "all-union agreement" between Quality and the Union. The employees voted unanimously in favor of such an agreement.

Stone Industry, Inc.,"<sup>5</sup> it is clear that both were members of that employer association as of August 1, 1957.<sup>6</sup>

The Association was formed by members of the quarry industry on November 18, 1952, for the purpose, *inter alia*, of negotiating with various unions. From its inception the Association, through a designated bargaining committee, negotiated three contracts with the Union. The committee acted only for those members which authorized such representation, and each member signed separate but identical<sup>7</sup> contracts. Witnesses for the Employers gave conflicting testimony concerning the extent to which the members were bound by results of the committee's negotiations, some witnesses claiming each company had a right to accept or reject any agreement reached. However, it appears that in practice none of the participating members had rejected any such agreement. Furthermore, the minutes of the Association reveal various resolutions by the group giving the committee certain authority to negotiate, including the following resolution which appears in the minutes of June 1959:<sup>8</sup>

Further resolves that said Committee [Negotiations Committee for the Teamsters Contract] be and it is hereby given full authority to negotiate a contract with the Teamsters Union, which terms shall not exceed the wage pattern and fringe benefits of the Journeymen Stone Cutters Contract . . . .

The last of the three contracts with this Union ran from 1959 to 1962. At the time of those negotiations the committee represented approximately nine employers, including Quality and Halquist, and individual contracts were again executed.<sup>9</sup> Shortly thereafter, the Association became inactive, although it was not dissolved, and the committee did not function after 1959 except for a limited purpose.

On March 15, 1962, the Union sent a notice of its desire to reopen the contract to all employers who had signed the 1959 contract. In May 1962 seven employers, including Quality and Halquist, appointed a bargaining committee composed of A. C. Halquist (of Halquist), Lloyd Wolf (of Quality), and an official of another company as alternate. On June 6, 1962, the Union was informed that these seven companies were being represented by the bargaining committee.

<sup>5</sup> Hereinafter referred to as the Association.

<sup>6</sup> As of that date, there were 19 members of the Association, including these Employers.

<sup>7</sup> Although the contracts were identical, the provisions were applicable to a particular employer only insofar as they were pertinent. Thus, if an employer did not employ a particular classification covered by the contract, the contract was not effective in that respect as to that employer.

<sup>8</sup> In addition, the minutes of May 2, 1959, show that a motion was unanimously passed naming a committee to "negotiate with Teamsters for Lannon-Sussex area and for those who sign a delegation of authority . . ." The record also includes a notice from the Association to its members calling a meeting "to consider counter-proposals."

<sup>9</sup> The Union also had individual contracts with other employers in the area, who adopted the contract negotiated by the Association's committee but who were not members of the Association or had not delegated bargaining authority to the committee.

Bargaining meetings were held between June 4 and June 25, 1962. On the latter date, the Union rejected the committee's "last wage offer" and the Employers refused the Union's request to discuss the Union's demand for recognition as the representative of owner-operator or "independent" truckdrivers. On June 29, picketing was begun at Halquist, Quality, and a third company, not involved in this proceeding, to secure recognition of the Union as the representative of owner-drivers.

On August 22, 1962, three employers informed the employer committee that they were withdrawing from the bargaining group, and the committee accepted the withdrawals on August 28. When the Union was advised on September 6 of these withdrawals, it refused to bargain in other than the multi-employer group. At no time has Halquist or Quality attempted to withdraw the authority of the committee to bargain on its behalf or informed the committee or the Union that it wished to do so.

From the above facts, and upon the entire record, it is clear, and we find, that Quality and Halquist have bargained on a multiemployer basis at all relevant times.<sup>10</sup> Their conduct throughout indicates that they evinced an unequivocal intent to be bound by group action, and, as noted above, they have never taken any steps to adopt an individual course of action prior to the position taken during the course of this proceeding. Accordingly, we conclude that at all times the Employers were engaged in group bargaining and their employees were part of a multiemployer unit. The fluctuating membership of the multi-employer group does not require a finding either that there was any change in the essential character of the unit<sup>11</sup> or that the multi-employer unit is rendered inappropriate.<sup>12</sup> Nor does the retention by participating employers of the right to approve or disapprove the agreement reached require a different conclusion.<sup>13</sup> Although the Union was certified in a single-employer unit for the Halquist employees, it is clear and we find that inasmuch as the Employer and the Union thereafter intended to and did engage in multiemployer bargaining, the certified single-employer unit has been merged into the overall multiemployer unit.<sup>14</sup> Furthermore, contrary to the Employers' contention, we find nothing in the record which justifies a finding either that the Union has abandoned the multiemployer unit

<sup>10</sup> See *Hoisting & Portable Engineers Local Union #701 International Union of Operating Engineers, AFL-CIO (Cascade Employers Association, Inc)*, 141 NLRB 469; *Belleville Employing Printers*, 122 NLRB 350, 353.

<sup>11</sup> *Cascade Employers Assn.*, *supra*.

<sup>12</sup> *Krist Gradis*, 121 NLRB 601; *Puerto Rico Steamship Association*, 116 NLRB 418, 421.

<sup>13</sup> *Krist Gradis*, *supra*, at p. 610; *Belleville Employing Printers*, 122 NLRB 350; *American Publishing Corporation*, 121 NLRB 115.

<sup>14</sup> *Unvac Division of Remington Rand Division of Sperry Rand Corporation*, 137 NLRB 1232.

or that it is estopped from urging that only the multiemployer unit is appropriate.<sup>15</sup>

Accordingly, we find that the single-employer units of employees of Halquist and Quality are not appropriate, and we shall dismiss the petitions herein.

[The Board dismissed the petitions.]

<sup>15</sup> Cf. *Scougal Rubber Mfg. Co., Inc., et al.*, 126 NLRB 470; *Neville Foundry Company, Inc.*, 122 NLRB 1187. We note that the union conduct relied on by the Employers concerned union attempts to represent groups not previously represented by it. Thus, it sought a separate unit of one employer's inside workers who had previously been represented by another union and attempted to engage in multiemployer bargaining for owner-drivers but thereafter filed separate petitions for those drivers.

**Douglas Aircraft Company, Inc. and United Automobile, Aircraft & Agricultural Implement Workers of America (UAW-CIO),<sup>1</sup> Petitioner and International Association of Machinists, District Lodge No. 1578.<sup>2</sup> Case No. 21-R-2025. July 3, 1963**

#### ORDER DENYING MOTION FOR CLARIFICATION OF CERTIFICATION

On February 18, 1944, after an election conducted pursuant to a Decision and Direction of Elections,<sup>3</sup> the Board issued a certification of representatives in the above-entitled proceeding in which the UAW was certified as the bargaining representative in the following unit:

All hourly paid production and maintenance employees of Douglas Aircraft Company, Inc. (Long Beach Plant), Long Beach, California, including leadmen, spot, flash, and seam welders, department and plant clericals, tool liaison employees, and 4-hour shift employees not employed at "feeder" plants, but excluding timekeepers, "feeder" plant employees, detached warehouse employees, school employees, plant protection employees, safety department employees, time and motion study employees, truck transportation department employees (external transportation department), oxyacetylene, oxyhydrogen, and electric arc welders, gas flame cutters, beginner welders, administrative employees, confidential employees, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action.

<sup>1</sup> Hereinafter referred to as the UAW.

<sup>2</sup> Hereinafter referred to as the IAM.

<sup>3</sup> 54 NLRB 67.