

**Atlas Sheet Metal Works, Inc., Employer and Petitioner and Local Union No. 223, Sheet Metal Workers International Association, AFL-CIO,<sup>1</sup> Union.** *Case No. 12-RM-78. July 27, 1964*

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 Hearing Officer Herbert N. Watterson. 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 Fanning and Jenkins].

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

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organization involved claims to represent certain employees of the Employer.

3. The Union contends that the Employer is part of a multiemployer bargaining unit represented by the South Florida Roofing and Sheet Metal Contractors Association, herein called the Association. It is the Union's contention that the Employer has never effectively withdrawn from the Association and is therefore legally bound by the contract negotiated between the Association and the Union. The Employer's position is that it did effectively withdraw from multiemployer bargaining; that the proper unit is limited to employees of the Employer; and that the Association contract is not effective until signed.

For a period of 6 or 7 years prior to 1963, the Employer was a member of the Association and had authorized the Association to act as its agent in multiemployer bargaining. The Employer also authorized the Association to act as its agent in associationwide bargaining during the 1963 contract negotiations.

During the 1963 negotiations, the Employer, who was represented on the Association bargaining committee by its president, stated that it was an "industrial" type outfit, and that it would not sign a "construction" type contract, which was the type of contract the parties were negotiating. Nevertheless, the Association and the Union bargained up to June 28, 1963, when an impasse was reached between the parties. On June 30, 1963, the most recent contract between the Association and the Union expired. Thereupon, the Union called a strike which commenced July 1, 1963.

<sup>1</sup>The name of the Union appears as amended at the hearing.

By letter dated July 3, 1963, the Employer notified the Association that it was revoking its prior authorization to the Association to act as its bargaining agent. No copy of this letter, or any letter concerning the Employer's revocation, was sent to the Union.

Goodwin Salkoff, president of the Employer and also a member of the Association bargaining committee, had a conversation with Union Business Agent Wallace Strong and Myron Strawver, a union member, about a week after the strike started. Salkoff told them that the Employer would not sign a construction type agreement. Salkoff also told them that he was no longer going to be on the Association bargaining committee. For its part, the Union, during the impasse and after the commencement of the strike, prepared an agreement which it presented to individual employers of the Association who desired to withdraw their bargaining authority from the Association, and who were willing to meet the Union's demands. This agreement, however, was never presented to the Employer.

The Association and the Union resumed bargaining on July 19, 1963, at which meeting Salkoff announced that he would not sign a construction type contract, and that he was resigning from the Association bargaining committee. Salkoff introduced his replacement on the committee and stated that he would attend future negotiations only as president of the Association. He did not participate in further bargaining, but did continue to attend meetings. On July 24, 1963, the Association reached an agreement with the Union.<sup>2</sup> Thereafter, the Union ended its strike against the Association, but picketing has continued at the premises of the Employer, even though the Union has never presented the contract to the Employer for signature.

In August 1963, as a result of a telephone discussion between the Employer and the Union's International president sometime prior to the agreement, the International president sent a representative, Ruben Reid, to meet with the Employer concerning industrial type plants. Reid agreed that the Employer was more an industrial type operation. Although the parties discussed industrial type contracts, the Union never tendered an industrial agreement to the Employer. Neither did Reid ask the Employer to sign the construction contract. Following the last meeting between the parties, Reid mailed Salkoff a copy of the Union's standard form for Food Service manufacturers, but no further meetings have taken place. In September 1963, the Employer filed the petition involved herein.

<sup>2</sup> Section 2 of addendum 11 attached to the agreement dated July 25, 1963, between the Association and the Union reads as follows:

The labor agreement negotiating committee for Local Union Number 223 recognizes and agrees that the South Florida Roofing and Sheet Metal Contractors Association is and shall be the sole and exclusive bargaining agent for and on behalf of all sheet metal contractors who sign this agreement.

The record shows that bargaining between the Association and the Union reached an impasse and, immediately after the multiemployer contract expired, the Union struck the Association members. Thereafter, the Employer notified the Association by letter that it was withdrawing its prior authorization to the Association to act as its agent. Also, the Employer informed the Union through Strong that it would not sign a construction type contract—the type of contract the Association was negotiating with the Union—and that the Employer was resigning from the Association bargaining committee. The Employer carried out its announced intentions when, at a subsequent negotiating session between the Union and the Association, the Employer informed both parties that its representative was resigning from the Association bargaining committee and was being replaced. The Union made no objection to the substitution of representatives. Later, after the strike against the Association had terminated but picketing continued at the Employer's premises, the Union bargained individually with the Employer with respect to an industrial contract.

From all the above circumstances, it is clear that the Employer's decision to withdraw from multiemployer bargaining evinced an intention to abandon, with relative permanency, multiemployer bargaining. The Union, however, contends it was not properly notified of the Employer's withdrawal from multiemployer bargaining. We find no merit in this contention. As indicated by the above recitation of facts, the Union not only concluded that the Employer had withdrawn from multiemployer bargaining, but also acquiesced in the withdrawal. The Union's acquiescence is reflected both by its consent to bargain with the Employer on a single-employer basis even after the Association and the Union had reached an agreement and by its other conduct such as its willingness to bargain with other individual employers during the impasse and its failure to present the Association contract to Respondent for signature.<sup>3</sup> We find, therefore, that the Employer had effectively withdrawn from the multiemployer bargaining unit and, consequently, is not bound by the contract between the Association and the Union.<sup>4</sup> Accordingly, we find that the appropriate unit is that limited to employees of the Employer and 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 Employer petitioned for a unit, as amended at the hearing, of: All ordinary production and maintenance employees, excluding all office clerical employees, guards, professional, and supervising employees as defined in the Act. The various classifications of employees

<sup>3</sup> *C & M Construction Company*, 147 NLRB 843.

<sup>4</sup> In view of our determination in this matter, we need not reach the Employer's further contention that the Association contract is binding only on those Employers who sign the contract

are welders, punch-press operators, brakehand operators, layout men, assemblers, shear men, material handlers, and stockroom, receiving and shipping, and plant maintenance employees. The parties apparently agree that all employees,<sup>5</sup> except material handlers and stockroom, receiving and shipping, and plant maintenance employees, are properly within the unit. It is the Union's position that employees classified as material handlers and stockroom, receiving and shipping, and plant maintenance employees should be excluded as the Union has never before represented such employees in associationwide bargaining.

The record shows that the employees in question are assigned to production work when time allows, helping assembling and running punch presses. They spend approximately 20 to 25 percent of their time in production work. When not engaged in production work, they assist production employees or work in close contact with the production employees. They, along with all production employees, are hourly paid, work in the same plant, and are covered by the same group insurance plan. Moreover, although not previously covered under the union multiemployer contract, these employees—4 in number—would be the only employees in a single-employer unit of approximately 40 employees not represented even though they presently work under the same working conditions. On these facts, and the record as a whole, we find that they are properly included and shall so include them in the appropriate unit.

Accordingly, we find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All ordinary production and maintenance employees of the Employer, including material handlers and stockroom, receiving and shipping, and plant maintenance employees, but excluding all office clerical employees, guards, professional employees, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

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<sup>5</sup>The parties stipulated, and we find, that four foremen, Tashman, Fraser, Dorta, and Vanderlip, have authority to hire and fire and that they, plus Plant Manager Mervyn Adirim and Bruno Onori, who has supervisory functions, are supervisors as defined in the Act. We shall, accordingly, exclude them from the appropriate unit.

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**H. C. Ladd and Son, Inc. and Baltimore Building and Construction Trades Council, AFL-CIO.** *Case No. 5-CA-2665. July 28, 1964*

### DECISION AND ORDER

On April 10, 1964, Trial Examiner James V. Constantine issued his Decision in the above-entitled proceeding, finding that Respondent 148 NLRB No. 7.