

introduced each "Nightmare" movie during this period. The voice inserts were not mere general comments which could have been made once and used repeatedly thereafter, but were related to each individual movie. Each 100 feet of the film takes about 1 $\frac{3}{4}$ minutes to run.

Gould-National Batteries, Inc. and Gordon Kenley, Petitioner and International Brotherhood of Electrical Workers, Local Union 217, AFL-CIO. *Case No. 27-RD-125. December 16, 1964*

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Hearing Officer Allison-E. Nutt. 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, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel [Chairman McCulloch and Members Leedom and Brown].

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

2. The Petitioner, an employee of the Employer, asserts that the Union, a labor organization, is no longer the representative of the employees designated in the petition as defined in Section 9(a) of the Act.

3. No 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, for the following reasons:

The Petitioner seeks a decertification election limited to employees at the Employer's Ogden, Utah, plant. The Employer agrees with the Petitioner that the employees at the Ogden plant constitute a separate appropriate unit. The Union¹ and Gould Battery Workers Council, EM-2, IBEW, AFL-CIO,² which, as discussed below, has bargained with the Employer on behalf of various local unions of the International Brotherhood of Electrical Workers, AFL-CIO,³ contend that because of a bargaining history on a broader basis the requested unit is inappropriate and the only appropriate unit is a multiplant unit, including the Ogden plant.

The Employer is primarily engaged in the manufacture, distribution, and sale of industrial batteries, automotive batteries, and other automotive parts at 32 manufacturing plants and 150 sales and ware-

¹ Hereinafter called Local 217.

² Hereinafter called the Council.

³ Hereinafter called the IBEW.

house facilities throughout the United States. Its Ogden plant, a warehouse and distribution facility for batteries manufactured at other plants, is the only plant immediately involved here.

On February 16, 1961, the Employer and 12 locals of the IBEW, entered into a 2-year contract, covering a multiplant unit consisting of 13 plants in 10 States.⁴ Thereafter, on April 16, 1962, following a consent election in Case No. 27-RC-2203, the Regional Director certified Local 217 as the collective-bargaining representative of a production and maintenance unit at the Employer's Ogden plant. On May 10, 1962, the Employer and Local 217 entered into an agreement, effective April 16, 1962, to include Local 217 as a signatory local union in the 1961 contract. The 1961 contract provides for such agreements, following Board certification of the International or its locals.⁵ On September 8, 1962, the Employer and "Signatory Local Unions of the International Brotherhood of Electrical Workers (AFL-CIO), hereinafter called 'the Union,'" entered into an agreement amending their existing contract by providing for the inclusion therein of a pension plan covering, *inter alia*, the employees at the Ogden plant.

In December 1962 bargaining negotiations began at Chicago between the Employer and the Council as the "authorized bargaining agents for all the locals listed in the contract." The Council demanded a single or national unit, but the Employer did not agree. By letter dated February 28, 1963, Local 217 gave notice to the Employer of its intention "Under the terms of the present National Agreement of which we are a part . . . to open the entire agreement for negotiations," and that Local 217 had delegated "full authority" to the Council to represent it in negotiations. On dates undisclosed in the record, the Employer sent notices to terminate the contract to individual locals.

About June 1963 at least some of the IBEW locals, parties to the 1961 agreement, began a strike against the Employer, one of the chief purposes of which was to force the Employer to agree to a single national unit. Local 217 did not strike, however,⁶ and its members continued to work and cross a picket line set up by unidentified

⁴ See *Gould-National Batteries, Inc.*, 146 NLRB 1138, in which the Board held that this contract encompassed a multiplant unit. We find nothing in this record to warrant a different conclusion.

⁵ The contract provides in relevant part: "Any units for which the Union or any of its Locals shall be lawfully certified by the National Labor Relations Board as exclusive bargaining representative, shall, upon assent in writing to this Agreement by such representative, be included in and covered by this Agreement as of the date of certification, except that either party may withhold the application of those portions of this agreement considered inapplicable to such units by giving written notice to the other party within thirty (30) days of such representative's assent. Any dispute that arises over the withholding of any portion of the agreement shall be negotiated between the parties. . . ."

⁶ Apparently, the only other local which did not engage in the strike was that representing employees at the Employer's Houston, Texas, plant.

individuals referred to as strangers, who distributed pamphlets bearing Local 217's name and stating that the sole purpose of the patrolling was to inform the public that the Employer refused to sign a "national agreement with the Electrical Workers." During negotiations at Washington, D.C., in July 1963, the director of manufacturing and organizational activities, IBEW, made a statement, in the presence of a representative of the Federal Mediation and Conciliation Service, as part of the effort to secure the Employer's consent to a multiplant contract, to the effect that at the end of the contract individual plants would be "free to decertify or to decide not to be represented by the IBEW."

On August 26, 1963, the petition in the instant case, relating only to the Employer's Ogden plant, was filed.

On October 9, 1963, the Employer and the IBEW entered into an agreement, apparently in settlement of the strike, *inter alia*, granting a "retroactivity payment," but withholding "the currently agreed to" benefits from two or three plants,⁷ including the Ogden plant, until the matters before the Board relating to these locations were disposed of. The agreement was silent on the subject of the unit. On the same day, the Employer, the Council, "and the signatory Local Unions affiliated with the International Brotherhood of Electrical Workers, AFL-CIO" entered into a contract effective from October 15, 1963, to April 15, 1966, and in the absence of notice, from year to year thereafter, covering 15 plants and 13 IBEW locals in 11 States, including the Ogden plant and Local 217. The introductory clauses of this contract as did the 1961 contract refer to unit in the singular. The contract was signed "for" the Employer by three of its officials and "for" the "Negotiating Committee—Gould Battery Council EM-2, International Brotherhood of Electrical Workers, A.F.L.-C.I.O.," by four of its members. It was subsequently ratified by all the local unions, although this is not required by its terms. On October 15, 1963, the strike ended.

The Board has held that a separate unit covered by a Board certification may by an effective bargaining history be merged into a broader unit so that only the broader historical unit is appropriate for decertification purposes.⁸ In the instant case, although Local 217 was certified in a single-plant unit for the Ogden employees, it is clear and we find that thereafter the certified single-plant unit was merged into the overall multiplant unit. In reaching this conclusion, we rely particularly on the following factors: (1) On May 10, 1962, less than 30 days after Local 217 was certified as the bargaining representative at the Ogden plant, the Employer and Local 217 en-

⁷ The record is not entirely clear on this point.

⁸ *San Juan Mercantile Corporation*, 117 NLRB 8; *Univac Division of Remington Rand Division of Sperry Rand Corporation*, 137 NLRB 1232; *Quality Limestone Products, Inc.*, 143 NLRB 589.

tered into an agreement including that local as a "Signatory Local Union" in the 1961 contract, as specifically anticipated and provided for in the contract itself.⁹ (2) On September 8 after the agreement including Local 217 as a "Signatory Local Union" in the 1961 contract, the Employer and the "Signatory Local Unions of the International Brotherhood of Electrical Workers (AFL-CIO)" entered into an agreement amending the 1961 contract by including therein a pension plan for the benefit of employees of the Employer, including, among others, those in the Ogden plant. (3) Beginning in December 1962 the Employer and the Council as the "authorized bargaining agents for all the locals listed in the contract," including Local 217, entered into negotiations for a new agreement. (4) This agreement, signed on October 9, 1963, is in all essential respects the same as the 1961 agreement which the Board has already found established a multiplant unit.

In view of the foregoing, we find that the Ogden plant employees' unit has been effectively merged into the multiplant unit. We shall therefore grant the motion to dismiss the instant petition, which requests an election among employees in a single-plant unit.¹⁰

[The Board dismissed the petition.]

⁹ See footnote 5, above.

¹⁰ *Gould-National Batteries, Inc.*, 146 NLRB 1142, relied on by the Employer, in which the Board found appropriate a single-plant unit at the Employer's Houston, Texas, plant, is distinguishable from the instant case. In that case, unlike the situation here, the Houston plant apparently had a single-plant bargaining history for some 7 years prior to the certification, and, moreover, the parties there stipulated that a single-plant unit was appropriate.

For the reasons stated in *Gould-National Batteries*, 146 NLRB 1138, we also find no merit in the Employer's reliance on the General Counsel's ruling in refusing to issue a complaint in *Gould-National Batteries, Inc.*, Case No. 18-CA-1542.

As we dismiss the petition for the reasons indicated, we find it unnecessary to consider other contentions raised by Local 217.

Silver Bakery Inc. of Newton and Charles T. O'Brien

Local 45, American Bakery and Confectionery Workers International Union (AFL-CIO) and Kenneth McLellan, Special Trustee; Local 45, American Bakery and Confectionery Workers International Union (AFL-CIO) and Bakers Union Local No. 45 affiliated with Bakery and Confectionery Workers International Union of America and Charles T. O'Brien. *Cases Nos. 1-CA-3739 and 1-CB-753. December 16, 1964*

DECISION AND ORDER

On January 13, 1964, prior to taking evidence on the merits, Trial Examiner W. Gerard Ryan granted Respondents' motion and dismissed the petition. 150 NLRB No. 45.