

Central New Mexico Chapter, National Electrical Contractors Association, Inc.; and Represented Employers¹ and International Brotherhood of Electrical Workers, Local Union 611, AFL-CIO, Petitioner. *Case No. 28-RC-1199. June 15, 1965*

DECISION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer James W. Mast, of the National Labor Relations Board. 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 Zagoria].

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

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

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

3. The Petitioner filed a petition for a Board certification in a multi-employer unit represented by Central New Mexico Chapter, National Electrical Contractors Association, Inc., herein called the Chapter. In the alternative, it seeks clarification of the multiemployer unit represented by the Chapter. In view of the parties' prior bargaining history and the fact that the Employer recognizes the Union as the majority representative of its employees in the bargaining unit, which we find below to be appropriate, we shall treat the petition herein as a petition for clarification under Section 102.60(b) of the Board's Rules and Regulations, Series 8, as amended, and shall determine the scope of the multiemployer unit represented by the Chapter.

4. The Petitioner would include within this unit members of the Chapter, nonmembers who have signed letters of "Assent A." and New Mexico Electric Construction Co., herein called NMECO, in the latter case contending that NMECO and Gamblin Electric Company, a member-signatory, constitute a single employer for unit purposes. Alternatively, the Petitioner seeks the most inclusive multiemployer unit, encompassing NMECO, which the Board finds appropriate.

The Employer contends that: (1) Individual firms do not grant to the Chapter authority to represent them in collective bargaining by virtue of their membership in that organization, and (2) signatories to letters of "Assent A." have merely conferred upon the Chapter

¹ The name of the Employer appears in the caption as amended at the hearing.

authority to represent them in negotiations over changes in the particular collective-bargaining agreement referred to in the signed instrument and the granting of such limited authority does not warrant a finding that those signatories constitute a multiemployer unit for purposes of collective bargaining within the meaning of the Act.

Further, Gamblin and NMECO contend that they do not constitute a single employer for unit purposes and, as NMECO has never signed a letter of "Assent A," that company is not part of any multiemployer bargaining unit the Board may nevertheless deem appropriate. Accordingly, they urge that the petition herein be dismissed as to NMECO.²

The record shows that the chapter, an association of employers in the electrical industry, was organized in January 1951, primarily for the purpose of bargaining collectively with labor organizations in the so-called Albuquerque, New Mexico, wage area. From its inception, it has negotiated with the Petitioner and has executed several agreements, the last on April 1, 1963. However, neither the Chapter's constitution, nor its bylaws, expressly grants to the Chapter the authority to represent its members in collective bargaining with the Petitioner. Indeed, an express grant was omitted from the Chapter's bylaws, notwithstanding a recommendation for its inclusion made by its national office. Further, there is nothing in the history of bargaining between the negotiating parties to warrant the inference that the Chapter possessed this authority, and the bargaining agreements themselves negate such an inference. Prior to 1958, these agreements were executed by the negotiating parties and adopted by the Chapter members. Subsequent thereto, while the format for negotiations remained the same, the parties developed the attendant use of so-called letters of assent. Thus, contracts since 1958 state that they are made by and between the Chapter

. . . on behalf of its members who employ workmen under the terms and conditions contained herein, *and have signed a Letter of Assent* to be bound by this Agreement for its duration as set

² Gamblin also contends that the Board does not have jurisdiction over it, as the firm was not served with a copy of a notice of hearing until after the hearing in this proceeding had begun. Gamblin therefore urges that, as to it, the petition herein be dismissed. The firm makes no contention or showing that it was prejudiced in any manner by having failed to receive a copy of the notice of hearing prior to the first day of the hearing, nor do we find prejudice thereby. Proper service was made upon the Chapter, as the representative of a multiemployer bargaining unit to which Gamblin belongs, as hereinafter set forth. In view of the resulting agency relationship, we find that service upon the Chapter constitutes adequate service upon Gamblin. Moreover, the record shows that Gamblin had actual notice of this proceeding and that two of its three officers, directors, and stockholders were present on the first day of the hearing in response to a *subpoena duces tecum* issued by the Board. Further, the petition herein clearly designated employees who were sought to be represented as those employed by a class of employers which included Gamblin. We also find, on the basis of the entire record, that Gamblin's interests were fully represented and that there was an opportunity to litigate all issues. Accordingly, Gamblin's motion to dismiss as to it is hereby denied.

forth below and Local Union 611, IBEW. It shall also apply to other individual employers who employ workmen under the terms of this Agreement and by virtue of signing a similar Letter of Assent, authorize the . . . Chapter . . . as their collective bargaining agent for all matters contained herein or affecting this Agreement, including all amendments or revisions adopted pursuant thereto.³ [Emphasis supplied.]

Under the circumstances, we find that individual firms do not, by virtue of their membership in the Chapter, grant to it the authority to act as their representative in collective bargaining so as to warrant their inclusion in a multiemployer bargaining unit.⁴

There are two forms of letters of assent in general use. They are designated as "Assent A" and "Assent B." "Assent A" differs from "Assent B" in that by signing the former, an individual firm agrees not only to adhere to the provisions of the bargaining agreement, but also designates the Chapter as its bargaining representative in the following terms:

In signing this Letter of Assent the undersigned firm does hereby authorize the . . . Chapter . . . as its collective bargaining representative for all matters contained in this agreement or pertaining to this agreement. This authorization to the . . . Chapter . . . , shall remain in effect until terminated by written notice to the parties to the aforementioned agreement 30 days prior to the notification date provided for therein.

The notification provision contained in the most recent agreement between the Petitioner and the Chapter is as follows:

Either party desiring to change or terminate this Agreement must notify the other in writing at least one hundred and twenty (120) days prior to March 31, 1965, or March 31st of any year thereafter.⁵

As previously stated, the Employer contends that individual firms conferred upon the Chapter only the limited authority to represent signatories to letters of "Assent A" in matters relating to the specific agreement referred to in the Letter of Assent. Such an interpretation renders nugatory the above-quoted language contained in the Letter of Assent pertaining to the termination of the Chapter's bargaining authority, the clear meaning of which is to continue the authority

³ Agreement between Central New Mexico Chapter of NECA, Inc, and International Brotherhood of Electrical Workers, Local Union No. 611, AFL-CIO, dated April 1, 1963, page 1.

⁴ Cf *Hoisting & Portable Engineers Local Union #701 International Union of Operating Engineers, AFL-CIO (Cascade Employers Association, Inc)*, 141 NLRB 469

⁵ Agreement between Central New Mexico Chapter of NECA, Inc, and International Brotherhood of Electrical Workers Local Union No. 611, AFL-CIO, dated April 1, 1963, article I, section 2.

reposing in the Chapter to represent a signatory unless such authority is expressly withdrawn 30 days prior to commencement of the negotiation period provided by the basic agreement. Rather, we find, on the basis of the entire record and especially in the light of negotiations subsequent to 1958, that Chapter members and nonmembers alike have, by signing a letter of "Assent A," delegated to the Chapter binding authority to represent them in collective bargaining. Accordingly, we find that such firms, except those which may have timely revoked the authority granted in accordance with the terms of "Assent A," comprise a multiemployer bargaining group.⁶

5. As aforesaid, the Petitioner contends that Gamblin, a signatory to letter of "Assent A," and NMECO constitute a single employer for unit purposes and, therefore, NMECO is also part of the multiemployer bargaining group although it has never signed a similar letter of assent.

The record shows that for the past 5 or 6 years, Gamblin has been engaged in the performance of commercial and industrial electrical contracting work. Its three officers, directors, and stockholders are Harry T. Gamblin, Robert E. Rodgers, and Edwin F. Wood. In February 1963, these individuals organized NMECO, becoming the officers, directors, and stockholders of the new firm as well. The testimony of these officials reveals that NMECO was organized for the purpose of engaging in residential electrical contracting work. Formerly Gamblin had performed this work. However, it had virtually abandoned such operations, finding it impractical to compete with non-union contractors as a result of rising operating costs. Since June 1962, house wiring, performed for special friends on a nonbid basis, has constituted less than one-half of 1 percent of Gamblin's total volume of business.

NMECO commenced operations in April 1963, as a nonunion contractor under the direction of Nap Duran who was hired from the outside to run the business. This individual is responsible for the day-to-day management of NMECO's affairs. However, he occasionally seeks the advice of the company's three officials, and the latter do not deny their ultimate right of control over the company's affairs. Duran bids on jobs and decides on the number of employees necessary to carry on the firm's business and on the terms and conditions of their employment. NMECO maintains separate office and warehouse facilities approximately 1½ miles away from Gamblin. NMECO never hired employees from Gamblin, nor is there any interchange of employees between the two firms. In the first fiscal year of its operation, NMECO

⁶ Cf. *Northern Nevada Chapter, National Electrical Contractors Association, et al.*, 131 NLRB 550.

grossed over \$270,000, over 98 percent of which was derived from residential electrical contracting work and the performance of service calls. The remainder represents commercial work performed on a non-bid basis.

There is ample evidence in the record to support the conclusion that, although Gamblin and NMECO are separate corporate entities, they constitute a single employer under the Act. However, this single-employer determination does not necessarily establish that an employer-wide unit is appropriate, as the factors which are relevant in identifying the breadth of an employer's operation are not conclusively determinative of the scope of an appropriate unit.⁷ In the circumstances of this case, and particularly in view of the separate supervision of employees of the two firms, their separate location, the lack of employee interchange, the absence of evidence showing functional integration, and the fact that the labor policies of NMECO, a residential contractor, are based on its own needs and are not dependent on those of Gamblin, a commercial and industrial contractor, we conclude that employees of NMECO do not have the same community of interest as employees employed by Gamblin. We find, therefore, no warrant for including NMECO in the multiemployer bargaining unit herein found appropriate.

Accordingly, we find that the following employees of the individual employers who have delegated authority to the Chapter to represent them for purposes of collective bargaining constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:⁸

All licensed journeymen wiremen and their indentured apprentices engaged in inside electrical construction work in Bernalillo, Santa Fe, Torrance, Guadalupe, DeBaca, Quay, San Miguel, Mora, Harding, Union, Colfax, Taos, Rio Arriba, Sandoval, Valencia, Socorro, Catron, Sierra, Luna, Grant, Los Alamos, and Hidalgo Counties, and all San Juan County, excluding the Navajo Indian Reservation;⁹ but exclud-

⁷ *Dawie Belle Mills, Inc., etc.*, 139 NLRB 629, 630.

⁸ The employers thus included in the multiemployer bargaining unit as signatories to letters of "Assent A" are listed in the attached Appendix and made a part hereof. Seven employers—Prokosch Electric Company, Brooks Electric, Determan Electric, Dunn Electric, Herkob Company, Inc., Service Electric, and Storey Electric—have apparently authorized the Chapter to bargain for them. However, the Petitioner did not introduce into evidence copies of letters of "Assent A" signed by these seven firms, as it had in the case of those firms included in the multiemployer unit. Moreover, the Petitioner does not contend that they are part of the multiemployer unit, and there is no evidence that they have, either directly or through the Chapter, actually participated in multiemployer bargaining. Prokosch Electric Company abandoned its contractual obligations with the apparent consent of the parties to this proceeding. The remaining six firms are "traveling contractors." Under the circumstances, we shall not include them.

⁹ The counties enumerated above comprise the geographical area set forth at page 19 of the April 1, 1963, agreement between the Petitioner and the Employer. The parties agree that the geographical area thus described is appropriate for unit purposes.

ing estimators, all other crafts, office clericals, guards, and supervisors,¹⁰ as defined in the Act.¹¹

¹⁰ Individual employers designate their foremen and general foremen from among the journeymen employees referred to particular jobs pursuant to the hiring hall provisions of the bargaining agreement here involved. These designations continue only for the referral period, and, upon termination, the employees who served as foremen and general foremen return to the hall and register as journeymen. The record indicates that there is a rapid and frequent change in the journeymen employees thus selected to serve as foremen and general foremen. Consequently, we find that whatever supervisory authority is exercised by employees acting either as foremen or general foremen is irregular and sporadic and does not warrant a finding that such employees are excluded from the unit.

¹¹ The unit is set forth above substantially as amended at the hearing.

APPENDIX

The following employers are signatories to letters of "Assent A" and constitute the multiemployer bargaining unit herein found appropriate:

Bomur-Chauvin	Kelly Electric Co.
Boone Electric Company	Las Vegas Electric
Bowers Electric, Inc.	McDowell Electric
Britt Electric Co.	Mesa Electric Co.
Carnell Electric	Modern Electric Co.
L. H. Chant Electric Co.	Newbery Electric Corp.
City Electric Co., Inc.	of Arizona
K. L. Conwell Electric Co.	Powell Electric Corp.
Dawson Electric, Inc.	Reno Electric Co.
Dee Electric Co.	Reynolds Electrical &
Eagle Electric, Inc.	Engineering Co.
Fulkerson Electric	State Electric Co.
Gamblin Electric Company	Titan Electric Service Co.
Grimes & Morris, Inc.	Wearden Electric
Heights Electric Co.	Yearout Electric Co., Inc.
Imperial Electric	

Operative Plasterers and Cement Masons International Association, Plasterers and Cement Masons, Local No. 65, and Dan Gustafson¹ and Twin City Tile and Marble Company² and Tile Layers Union No. 18 of the State of Minnesota, of the Bricklayers, Masons and Plasterers International Union of America, AFL-CIO; and Tile and Marble Setters Helpers, Twin City Local 34, Marble, Slate and Stone Polishers, Rubbers and Sawyers, Tile and Marble Setters Helpers, AFL-CIO.³ Case No. 18-CD-36. June 15, 1965

DECISION AND DETERMINATION OF DISPUTE

This is a proceeding pursuant to Section 10(k) of the National Labor Relations Act, as amended, following a charge filed by Twin City Tile

¹ The name of the Respondent Union, herein called the Plasterers, appears as amended at the hearing.

² Herein called Twin City or the Employer.

³ Herein called the Tile Layers.