

**Van Eerden Company and Van Eerden Produce Company Employees Committee, Petitioner and General Teamsters Union, Local 406, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent. Case No. 7-RD-570. August 13, 1965**

DECISION ON REVIEW AND DIRECTION  
OF ELECTION

On July 30, 1964, the Acting Regional Director for Region 7 issued a Decision and Order dismissing the petition for decertification filed by the Petitioner. Thereafter, on August 13, the Employer filed a request for review of the Decision and Order and on August 17 a motion to reopen the record. On September 21 the Acting Regional Director denied the motion to reopen the record. On September 24 the Employer requested review of the Acting Regional Director's order denying the motion to reopen the record. On November 5 the National Labor Relations Board ordered that the Employer's request for review of the Acting Regional Director's Decision and Order, and his order denying the motion to reopen the record be granted. Thereafter, on December 24, 1964, the Board ordered that the record be reopened and that a further hearing be held for the purpose of taking additional specified evidence. The case was transferred to the Board on February 16, 1965, after the additional evidence was taken. Thereafter, the Employer filed a brief with the Board.

Pursuant to the provisions of Section 2(b) of the National Labor Relations 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 Fanning and Jenkins].

The Board has considered the request for review, the brief, and the entire record in the case, and makes the following findings:

The Petitioner seeks to decertify the Union as bargaining agent of the employees of the Employer. The Union contends that the petition raises no question concerning representation because past bargaining history demonstrates that the Employer is part of a multiemployer bargaining unit. The Acting Regional Director found this contention to be supported by the evidence, and, applying the established Board rule that a petition seeking to decertify less than the certified or currently recognized unit will not be entertained,<sup>1</sup> dismissed the petition. The Petitioner and the Employer here, as below, contest the Acting Regional Director's conclusion

<sup>1</sup> *The Root Dry Goods Co., Inc.*, 126 NLRB 953.

154 NLRB No. 36.

that the Employer, certain other produce firms in Grand Rapids, and the Union involved have created a multiemployer unit. We find that the parties have not manifested an intent to join together in true multiemployer bargaining, and that, accordingly, the single-employer unit to which the petition is addressed is an appropriate one.

The Union began organizing drivers and salesmen in produce houses in Grand Rapids in the 1940's. Around 1950, the Union, desiring uniform contracts with common expiration dates, requested joint negotiations with the organized employers. Mackey, the Union's secretary-treasurer, testified, "We notified the employers that we would meet with them jointly, or individually; we would negotiate at a certain time and place, and whoever wanted to attend, could attend!"

In response to this invitation, five firms, each represented by its president or other official, have negotiated jointly with the Union since 1950: the Employer, Grand Rapids Produce, Hecht Produce, and (until they went out of business about 1958) two other produce houses. Between 1950 and 1964, five sets of contracts were consummated as a result of these negotiations. On each occasion, the contracts were individually executed by the firms, but were nearly identical in content, with only minor variations of no substantive importance.

The record only briefly touches on the manner in which bargaining was conducted prior to 1961. Union Representative Mackey gave the following description:

They [the employers] sat as a body. And, they would adjourn. And, usually somebody would act as the spokesman. And, they would adjourn and take our proposal, come back as a body, and negotiate the contract until we reached an agreement . . . They wanted a uniform contract. No one wanted to pay more than the other one. They wanted the same conditions . . .<sup>2</sup> They [each employer] had a right at any point to notify me whether they wanted to participate or whether they didn't. And if they didn't want to participate, I don't know how I could make them participate.

Another union witness testified that occasionally, during negotiations, an individual employer would protest to the Union about a particular provision, but that any compromise reached would be incorporated into all the contracts. He further testified that after

<sup>2</sup> Mackey did not explain whether the reference to what "they wanted" is based upon statements by the employers or upon his own appraisal of their desires.

terms had been settled upon by the company and union representatives, the draft contract would be submitted for ratification to a joint meeting of all the employees of the participating firms.

The most detailed testimony as to the past method of bargaining concerns the 1961 negotiations, which resulted in a 3-year contract. Van Eerden (for the Employer), Hecht (for Hecht Produce), and Kuccinski (for Grand Rapids Produce) met on five or six occasions with union officials and a joint employees' committee.

The evidence is in conflict as to the regularity of Hecht's attendance. A witness for the Union appeared to remember that Hecht attended most of the meetings, but Van Eerden stated that Hecht was present at no more than one. The evidence is similarly conflicting in regard to the position taken by the employers on the effect of Hecht's absence. According to Dertien, the union business agent, Van Eerden stated that he would speak for Hecht when Hecht was not present. Both Van Eerden and Kuccinski deny that this remark was made, and Van Eerden testified that he specifically stated that the other two companies could not make an agreement binding on Hecht in his absence. Van Eerden also testified that his statement was in accordance with an agreement made between the three employers, prior to the first 1961 bargaining session, that all negotiations were to be on an individual, rather than joint, basis, and that no agreement by one firm would bind the others. There is no evidence that this decision was specifically conveyed to the Union or whether it was intended to represent a change in employer policy.

Bargaining in 1961 followed the pattern established in earlier years. After the Union submitted its proposals, Van Eerden and Kuccinski discussed them and formulated counterproposals, which they then offered to the Union. The two firms held a few such intraemployer conferences during the negotiations, and Hecht attended at least one of them. Kuccinski testified that he and Van Eerden (but not Hecht) discussed and agreed upon the terms to be submitted as the employers' final proposal. After the union negotiators accepted these terms, the agreement was ratified at a meeting attended by employees of all three firms, according to Dertien's testimony. Separate, but substantially identical, contracts were subsequently executed, at various times, by the three companies.

Also present and bargaining at these 1961 negotiations, as well as at those held in 1958 and 1964, was a representative of the Kalamazoo local of the Union, who bargained with Kuccinski for a contract covering the Kalamazoo branch of Grand Rapids Produce. Kuccinski eventually executed, on behalf of the Kalamazoo branch, the same 1961 contract (except for one provision) that he, Van Eerden, and Hecht signed with the Grand Rapids local. The Union, how-

ever, does not assert in this proceeding that the Kalamazoo branch is part of the claimed multiemployer unit.

A multiemployer unit will be found to exist where the parties have indicated an unequivocal intention to be bound in their collective bargaining by group rather than individual action.<sup>3</sup> When employers have banded together informally to bargain, without expressly documenting their relationship to each other or to the unions involved, we have often inferred the presence of the requisite intention from the facts that the employers have participated for a meaningful period of time in joint bargaining negotiations and have adopted substantially uniform contracts resulting therefrom.<sup>4</sup> The ultimate question in these cases, however, is the *actual* intent of the parties, since multiemployer bargaining is a voluntary arrangement, dependent upon the real consent of the participants to bind themselves to each other for bargaining purposes. And where there is specific evidence, beyond the mere circumstances of joint negotiations and uniformity of contracts, indicating that the parties did not intend to accept the obligations and benefits of multiemployer bargaining, that evidence must be equally considered in determining the basic issue. In this case, certain conduct of the parties relating to the 1964 negotiations, detailed below, and various statements by them about the nature of the bargaining relationship, seem to us to raise a serious doubt as to whether they understood themselves to be committed to multiemployer bargaining.

On May 18, 1964, Grand Rapids Produce notified the Union, by letter, that it was canceling the existing contract as of July 31, the date agreed upon in the contract for such action, and that it desired to negotiate a new contract. Kuccinski, of Grand Rapids Produce, testified that he took this step without consulting Van Eerden or Hecht. He further stated that his reason for initiating negotiations at an early date was to be sure that his firm would get a new agreement by the earliest termination date of the current contract. The contract did not automatically expire on July 31, 1964, but rather provided for a year-to-year extension of its terms after that date unless either party wished to cancel or modify it. Kuccinski's separate decision to renegotiate the contract, and his individual approach to the Union about the matter is, we think, inconsistent with any understanding on his part that there existed a legal relationship between the parties requiring unitary action by the three employers.

Supplementing this convincing manifestation of Kuccinski's understanding that each employer retained the right to act independ-

<sup>3</sup> *The Kroger Co.*, 148 NLRB 569; *Morgan Linen Service, Inc.*, 131 NLRB 420.

<sup>4</sup> *American Publishing Corporation, et al.*, 121 NLRB 115; *Cleveland Builders Supply Co., et al.*, 90 NLRB 923.

ently vis-a-vis the Union is his direct testimony to this effect. Kuccinski stated at the hearing that at no time did he have the authority to bind Hecht or Van Eerden, and conversely, that they were not empowered to commit him to any agreement. At several points during the hearing, Van Eerden evidenced a similar understanding about the absence of a legal bond between the employers. Similarly, as we have previously mentioned, Union Representative Mackey indicated a belief that in the past he had actually been dealing with the employers on an individual basis. When asked at the hearing, "Did you ever have any discussion with anybody as to the authority of anybody in the group to bind anybody else?" Mackey replied, "I didn't ask them that. They had a right at any time to notify me whether they wanted to participate or whether they didn't. And if they didn't want to participate, I don't know how I could make them participate." Mackey's assumption that each employer could decline to participate in group bargaining "at any time," even, presumably, after negotiations had commenced, implies an understanding on the part of the Union that it was engaging in nothing more than group bargaining for the sake of convenience.

The Union's own uncertainty about the nature of its bargaining with three employers is, we think, further exemplified by its conduct with respect to the ratification of the contract which it negotiated with Kuccinski in July 1964. After the instant decertification petition had been filed on May 28, Kuccinski and Dertien arranged for a bargaining meeting to be held on July 9. Dertien called Van Eerden and Hecht and asked them to attend. The former stated that he would not be present because of the decertification proceeding, and the latter said that his attorney was out of town and that he himself would not be able to attend. Thereafter, Kuccinski bargained only on behalf of his firm, Grand Rapids Produce, with the Union until July 25, when tentative contract terms were reached. Dertien testified that he thereupon notified the employees of all three companies to attend a ratification meeting on or about July 25, but that only Grand Rapids employees appeared. They voted to accept the negotiated terms. At the hearing, Dertien testified to his belief that the balloting by these 21 employees bound both the Union and the 3 employers to the contract so ratified. However, on July 31, the nine employees of Hecht Produce met at the union hall and also voted to ratify the contract. Dertien stated that he held this meeting at the request of the Hecht employees, all of whom, he says, had earlier informed him that they would not be able to attend the July 25 meeting. His notes on the July 31 voting read, in part, as follows: "Motion made and second [sic] that we ask for the same wages and conditions as received by Grand Rapids Produce. 7 for 2 against . . .

Motion made and second that we go on strike if contract cannot be reached. 6 yes 3 no.”<sup>5</sup> We find it difficult to reconcile Dertien’s position at the hearing—that the July 25th ratification meeting effectively bound all parties—with his willingness to permit the Hecht employees to take a later ratification vote of their own. The fact that the second meeting took place, and the terms in which the various motions made at the meeting were couched, evince an understanding on the part of Dertien, and the Hecht employees as well, that these employees had a right to act as a single unit independently of the rest of the employees. Of similar import is the uncontradicted evidence that after Van Eerden had agreed, in September 1964, under constraint of the Acting Regional Director’s Decision, to bargain on a multiemployer basis, the Union was willing to negotiate individually with him about the terms of the contract, an apparent contradiction of its present insistence that the contract negotiated in July by the Union and Grand Rapids bound all parties.

In the light of the evidence of the parties’ attitudes toward their bargaining relationship, as set out above, the element of an “unequivocal intention to be bound by group action” is not, we think, made out. As the necessary prerequisite to a multiemployer unit finding has not been established, the petition, requesting decertification of the Union as bargaining representative of the employees of the Van Eerden Company is appropriately cast. Accordingly, we shall direct an election in the unit petitioned for, as amended at the hearing.

The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act: All city drivers, highway drivers, warehousemen, leadmen, banana men and janitors employed by the Employer at its Grand Rapids, Michigan, establishment, excluding office clerical employees, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

MEMBER JENKINS concurring:

I concur in the result reached by my colleagues in this case.

<sup>5</sup> The Union offered these notes, and others relating to certain negotiating sessions, in evidence, but upon objection by the Employer the Hearing Officer rejected them. The notes were authenticated, were contemporaneously made, and appear to be reliable as union business records. See *Grinnell Corporation*, 97 NLRB 1268, in which the Board considered the minutes of a union meeting relating to ratification of a contract. Since the rules of evidence are not stringently applied in representation proceedings, and since the Union offered these notes for its own purposes, we see no prejudice to the Union in our present consideration of them. *Hotel Admiral Semmes*, 127 NLRB 988; *Local Union 825, International Brotherhood of Operating Engineers, AFL-CIO (Carleton Brothers Company)*, 131 NLRB 452, 463.