

to bargain at one time and place and through one set of negotiators for the separate units⁵ This is not to say that the Union is not seriously pressing the Employer to agree to a merger of the separate units, it is to say that this record shows that it has been unsuccessful to date in such efforts Accordingly, as there is no unmistakable indication that these parties *mutually* intended to extinguish the right of the employees in each branch office to select, change, or decertify their bargaining representatives by the vote of their separate majorities, we reject the Union's contention that the decertification petition seeks an election in an inappropriate unit⁶

We find, accordingly, that the following employees constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act

All customer engineers employed at the Employer's Minneapolis, Minnesota, branch office, excluding clerical employees, executives, salesmen, and all supervisors as defined in the Act

[Text of Direction of Election omitted from publication]⁷

⁵ See *Swift & Company* 124 NLRB 50

⁶ *Hygrade Food Products Corporation* 85 NLRB 841 *Univac Division Sperry Rand Corporation* 158 NLRB 997

⁷ An election eligibility list containing the names and addresses of all the eligible voters must be filed by the Employer with the Regional Director for Region 18, within 7 days after the date of this Decision and Direction of Election The Regional Director shall make the list available to all parties to the election No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed *Eccelsior Underwear Inc et al* 156 NLRB 1236

Univac Division, Sperry Rand Corporation and R. W. McCabe, et al, Employees-Petitioners, and International Union of Electrical, Radio and Machine Workers, AFL-CIO, Local 459

Univac Division, Sperry Rand Corporation, Employer-Petitioner and International Union of Electrical, Radio and Machine Workers, AFL-CIO, Local 459 Cases Nos 18-RD-339 and 18-EM-500 May 19, 1966

DECISION AND DIRECTION OF ELECTION

On petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was conducted before Hearing Officer Max Rotenberg¹ The Hearing Officers' rulings made at

¹ The hearing during the first 3 days was conducted by Alan Bruce and during the last 3 days by Max Rotenberg The substitution of the Hearing Officer was occasioned by Bruce's illness

the hearing are free from prejudicial error and are hereby affirmed.² Both the Employer and the intervening Union have filed briefs with the National Labor Relations Board.³

Pursuant to the provisions of Section 3(b) of the Act, the National Labor Relations Board has delegated its powers in connection with these cases to a three-member panel [Chairman McCulloch and Members Fanning and Jenkins].

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

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

2. The Employees-Petitioners assert that the Union, which is the certified bargaining representative of the employees involved herein, is no longer such representative as defined in Section 9(a) of the Act.

3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Sections 9(c) (1) and 2(6) and (7) of the Act, for the following reasons:

The Employees-Petitioners seek a decertification election limited to a unit of tabulating machine servicemen at the Employer's Minneapolis, Minnesota, branch office. The Employer-Petitioner contends that the unit sought is appropriate since it is a Board certified unit and its separate identity has been maintained during bargaining between it and the Union. The Union contends that the Board's decision in the *Univac Division of Remington Rand Division of Sperry Rand Corporation*, 137 NLRB 1232, shows that a multiplant unit has been established by action of the parties and that, therefore, these petitions should be dismissed on the grounds that the unit sought is inappropriate.⁴

At present, the Employer has 43 branch offices, 15 of which are represented by the International Union of Electrical, Radio and Machine Workers, AFL-CIO, and its affiliated Locals 459, 852, and 275, 3 branches by the International Union of Machinists, AFL-CIO, (hereinafter referred to as the IAM), and the remaining 25 are unrepresented.

Board records show that various bargaining representatives have been individually certified as the representative of employees in each of the branch office units pursuant to stipulations for consent elections. The unit of tabulating machine servicemen (hereinafter referred to as servicemen) in Minneapolis was established in Case No. 18-RC-729, on September 18, 1950, and was represented for

² After the hearing and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, Series S, as amended, the Regional Director issued an order transferring the cases to the Board for decision.

³ The Employer's request for oral argument is hereby denied as the record and the briefs adequately present the issues and the positions of the parties.

⁴ The Union's motion to dismiss is hereby denied on the basis of our Decision in this case.

purposes of collective bargaining by the Mechanical and Electrical Workers, Independent. Thereafter, the Independent affiliated with IUE-Local 459 and entered into its first collective-bargaining agreement on December 18, 1950. Successive agreements were thereafter entered into between the parties; it is noted that these agreements were signed by employee representatives of the Minneapolis unit, with the possible exception of the 1962-65 agreement.⁵

All these agreements were entered into by the Employer, on behalf of its tabulating machine service department at Minneapolis, and IUE-Local 459. As in the case of the Minneapolis unit, all the other branch office units have been covered by separate collective-bargaining agreements.

Board records further substantiate the evidence presented in this case showing that:

In 1948 and 1949, employees in four branch offices in St. Louis, Missouri, Newark, New Jersey, Syracuse and Buffalo, New York, pursuant to four separate petitions, designated IUE-Local 459's predecessor as bargaining representative for their individual branches.

In 1950, as a result of separate petitions and elections, employees in the Providence, Rhode Island, Philadelphia, Pennsylvania, Chicago, Illinois, Milwaukee, Wisconsin, and the Minneapolis branches, selected IUE-Local 459's predecessor as their collective-bargaining representative.

In 1952, IUE-Local 459 won an election among branch employees in Detroit, Michigan, and was certified as bargaining representative of employees in a separate unit. In the same year, IUE-Local 459 lost an election conducted among employees in the Pittsburg, Pennsylvania, branch.

Upon the expiration of the second Providence collective-bargaining contract on January 31, 1953, no new agreement was entered into because the Employer rejected Local 459's request for bargaining until and unless the local demonstrated its majority status; the servicemen employed there have since remained unrepresented.

In 1953, pursuant to an election, IUE-Local 459 was certified by the Board as the representative of a unit of servicemen in the Bridgeport, Connecticut, branch. Two successive collective-bargaining contracts were signed; subsequently, the Union lost its majority status. Since February 29, 1956, the Bridgeport servicemen have remained unrepresented.

⁵ Extensions were effective to the Minneapolis agreement on February 1, 1952, to January 31, 1953, and March 2, 1953, to August 31, 1954. Subsequently, agreements were entered into for September 1, 1954, to February 29, 1956; March 6, 1956, to February 28, 1958; March 17, 1958, to September 6, 1961, and February 14, 1962, to January 29, 1965.

In 1954, pursuant to an election, IUE-Local 852 was certified as the bargaining representative for servicemen in the San Francisco, California, branch office. The bargaining contract was separately executed on July 29, 1954, as no other bargaining contracts were executed by the parties until October 11, 1954.

On May 30, 1956, a separate bargaining contract was entered into for the servicemen in the Boston, Massachusetts, branch, 3 months after the execution of all other collective-bargaining contracts for that year. Also, in 1956, Elmira, New York, servicemen were added to the Syracuse unit after a separate election, and the servicemen at Aurora, Peoria, and Rockport, Illinois, and Hammond, Indiana, were added to the existing bargaining unit at Chicago, Illinois.

In March 1958, servicemen in the Pittsburgh branch, who had voted in 1952 against representation by IUE-Local 459, voted to be represented by the IAM.

In addition to the above showing of the separate units choosing and changing their respective bargaining representatives over the years, the record further shows no manifestation on the part of the Employer and the Union of an intention to merge these separate units into one overall unit. The Employer's position has always been that it was bargaining for separate units. This is shown conclusively by documents contained in this record, such as the agreements themselves, the correspondence, and the conduct of the parties during negotiations.

Thus, on December 10, 1955, IUE-Local 459 by letter to the Employer initiated negotiations for the purpose of negotiating new collective-bargaining agreements. At this time, however, the Employer only agreed to negotiate for 11 of the 12 units specified in the Union's letter; it excluded the Bridgeport unit on the ground that the Union no longer represented a majority of the Bridgeport employees. At the conclusion of these negotiations, 11 separate contracts were signed; the Bridgeport branch employees were not covered.

In 1956 one of the proposals made by the Union was a demand for one national contract covering all tabulating cities; the Employer rejected this proposal.

On December 12, 1957, IUE-Local 459 wrote the Employer to initiate negotiations for the 1958-61 collective-bargaining agreements, listing 12 units in its heading; it excluded Bridgeport and in its place included Boston.

On June 30, 1961, IUE-Local 459 opened the negotiations for new collective-bargaining agreements with almost an identical reopener letter which referred to "Tabulating Service Department Units," listing them and offering to meet for the above purpose.

In January 1962, while the 1961-62 contract negotiations were being conducted, the Elmira-Syracuse unit employees submitted their resignations to the Union and revoked union checkoff authorizations. They subsequently filed a decertification petition in Case No. 3-RD-198, and IUE-Local 459 for the first time alleged, in a motion to dismiss the petition, that the unit sought was inappropriate on the grounds that the individual units had been merged into one overall unit covering all the represented branch offices.⁶

The record in this case shows that, during the period of the Syracuse proceedings, the parties concluded their negotiations for the 1962-65 contract with 11 agreements being agreed to by the parties with the exclusion of the above Elmira-Syracuse branch office unit. Since that time, the record herein shows that the parties, although in accord as to the 11 agreements for the other represented branch offices, failed to sign the agreements. The Employer insisted that the agreements, as in the past, be individually signed by the representatives of the various branch office units, and IUE-Local 459 insisted that they be signed by the negotiating committee of the National Conference Board, which did not include representatives of all the branch office units but which conducted the negotiations on behalf of the certified IUE Locals.⁷ It was not until July 1964 that the Employer executed the 11 agreements with the Intervenor and only upon the representation of the Intervenor that the signatures of the members of the negotiating committee of the National Conference Board were authorized by and binding upon the units at each of the locations.

Concerning the Elmira-Syracuse unit, on October 7, 1964, a memorandum of agreement was executed between IUE-Local 459 and the Employer calling for the signing of a contract covering the above unit on or before October 12, 1964, the date of the contract to be February 14, 1962. It is noted in the memorandum agreement that one of the terms insisted upon by both parties was "That this settlement shall not be construed as an admission by either of the parties as to their respective positions on the fundamental nature and extent of the bargaining unit and the contractual relationship." The record herein continues to show that up until the time of the filing of the decertification petition in this case, the intentions of the parties have

⁶ The Board on July 10, 1962, rendered its decision in *Univac Division of Remington Rand Division of Sperry Rand Corporation*, 137 NLRB 1232, and at 1234 stated: "We find on these facts, that the Employer and the Union intended to and did carry on bargaining on the basis of a multiplant unit and that the individual certified units had been merged into one overall unit," and dismissed the petition.

⁷ The record shows that since 1956 negotiations were conducted by the Union in the manner described in the *Univac* decision, *supra*.

been unchangeable concerning the extent of the bargaining unit and the contractual relationship.

We find on the basis of the evidence presented in this record that the Employer and the Union have never mutually agreed that their negotiations have been for one overall or multiplant unit during the course of their collective-bargaining relationship. Furthermore, although the 1962 *Univac* case, *supra*, shows that the parties since 1956 carried on centralized bargaining negotiations in New York City, we find the record in this case to be barren of any indication that the parties mutually intended to effect a consolidation of the branch office units thereby destroying the separate identity of each one. From all that appears in this record, the Employer and the Union adopted the practice of negotiating at New York City because it was convenient to bargain at one time and place. There is no indication that these parties mutually intended to extinguish the right of employees in each of the branch office units to select and change their bargaining representatives at appropriate intervals, by balloting limited to their separate units.⁸

We therefore find, on the basis of the above facts and the record herein, as well as our holding in the companion case, *Remington Office Machines, Minneapolis Branch, Division of Sperry Rand Corporation*, 158 NLRB 994, issued simultaneously herewith, that during the years of collective bargaining between the parties the Minneapolis servicemen have not been merged into one overall unit, nor has their participation in the centralized negotiations constituted a waiver or loss of their separate identity, as originally certified in 1950.

We find, accordingly, that the following employees constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All tabulating machine servicemen at the Employer's Minneapolis, Minnesota, branch office, excluding clerical employees, executives, salesmen, and all supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]⁹

⁸ We find, therefore, that the *Univac* decision is not controlling on the issue herein, and, to the extent that it may stand for the proposition that the separate certified units have been merged into one multiplant unit, it is overruled.

⁹ An election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 18 within 7 days after the date of this Decision and Direction of Election. The Regional Director shall make the list available to all parties to the election. No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. *Ecclesior Underwear Inc., et al*, 156 NLRB 1236