

after October 8, 1964, to recognize the Union as the representative of such unit, and by refusing to furnish the Union with merit review data relative to the employees in such unit, Respondent has not violated Section 8(a)(5) and (1) of the Act.

[Recommended Order omitted from publication.]

Adams Furnace Co., Inc.; A-Air Heating & Cooling Co., a/k/a C. F. Jacobs & Co.; Acme Heating & Ventilation Corp.; C. & R. Heating & Service Co., Inc.; Downtown Heating & Sheet Metal Works; Droste Heating & Sheet Metal Co.; Eveready Heating & Sheet Metal Co.; Grossmann Contracting Co.; Shocklee Heating & Sheet Metal Co.; Shure-Richardson, Inc.; Sodemann Heat & Power Co.; Harster Heating & Air Conditioning Co.; T-W Heating & Sheet Metal Co.; J. F. Higgins & Co.; Tharpe Heating & Sheet Metal Co.; Hopmann Cornice Co.; Weis Heating & Cooling Co.; Welsch Furnace Company; Kunez Heating & Sheet Metal Co.; Western Blow Pipe & Sheet Metal Co.; Wheeloc Engineering Co.; Lackland Sheet Metal Works; D. F. Dewards Heating Co.; Consolidated Engineering & Sheet Metal Co.; Mound Rose Cornice & Sheet Metal Works, Inc.; R. F. Meeh Co.; Merritt Heating & Air Conditioning Co.; Meyer Bros. Automatic Heating & Cooling Co.; Puhl & Hepper Manufacturing Co., Inc.; St. Louis Blow Pipe & Heater Co.; St. Louis Furnace Supply Co.; Lyon Sheet Metal Works, Inc.; Lucas Sheet Metal & Furnace Co.; Lasater Heating & Air Conditioning Co.; and Maplewood Sheet Metal Co. and Sheet Metal Workers International Association, AFL-CIO, Local 36, Petitioner

Sheet Metal & Air Conditioning Contractors Association of St. Louis,¹ Employer-Petitioner and Sheet Metal Workers International Association, AFL-CIO, Local 36. Cases 14-RC-5392, 5393, 5395, 5396, 5397, 5398, 5399, 5400, 5401, 5402, 5403, 5404, 5405, 5406, 5407, 5408, 5409, 5410, 5411, 5412, 5413, 5414, 5415, 5416, 5417, 5418, 5419, 5420, 5421, 5422, 5423, 5424, 5426, 5427, and 5428, and 14-RM 310. June 29, 1966

DECISION AND DIRECTION OF ELECTIONS

Upon separate petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, a consolidated hearing was held before Hearing Officer Philip L. Curd. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. No briefs have been filed by the parties.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has

¹ The name of the Association appears as amended at the hearing.

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 these cases, the Board finds:

1. The Employers in Cases 14-RC-5392 and 14-RC-5428 are engaged in commerce within the meaning of the Act.²

2. The labor organization involved in Cases 14-RC-5392 through 14-RC-5428 hereinafter referred to as the Union, claims to represent certain employees of each Employer in separate units. On the other hand, in the petition in Case 14-RM-310, a multiemployer association, hereinafter referred to as the Association, asserts that the Union represents the same employees in a multiemployer unit.³

3. Questions affecting commerce exist concerning the representation of employees of the Employers in Cases 14-RC-5392 through 14-RC-5428 within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act.

The Employers are engaged at their places of business in the State of Missouri in sheet metal fabrication and installation of related items.⁴ The Petitioner in Cases 14-RC-5392 through 14-RC-5428 seeks to represent a separate unit at each Employer of all journeymen and apprentice sheet metal workers, excluding office clerical and professional employees, guards, all other employees, and supervisors as defined in the Act.⁵ The Sheet Metal & Air Conditioning Contractors Association of St. Louis, Employer-Petitioner in Case 14-RM-310, seeks a unit of the same description, but, in addition to the Employers in Cases 14-RC-5392 through 14-RC-5428, would include nine other employers which are also members of the Association.⁶ The Employers and the Association contend that the only

² On May 11, 1966, the Petitioner's request to withdraw the petitions in Cases 14-RC-5394 and 14-RC-5425 was approved by the Regional Director.

³ The Association asserts further that the multiemployer unit should also include nine other employers which are members of the Association.

⁴ Except when otherwise specified, the words "Employers" and "Employer" shall refer solely to those Employers listed in Cases 14-RC-5392 through 14-RC-5428.

⁵ At the hearing the petition in Case 14-RC-5422, relating to St. Louis Blow Pipe & Heater Co., was amended to also exclude all employees covered by a prior certification to another labor organization in a production and maintenance unit.

⁶ Three of the nine employers, identified in the record as Phil Poehner, Cuddy Sheet Metal Works, and Master Heating & Sheet Metal Co., have become parties to the current collective-bargaining agreement between the Association and the Union. The remaining employers have separate Board certifications and individual contracts with the Union which have the same terminal dates as the Union's agreement with the Association. These are Byrd Sheet Metal, Inc., certified March 17, 1965 in Case 14-RC-5049; Climate Engineering Corporation, certified March 16, 1965 in Case 14-RC-5037, Excel Heating Company, certified March 12, 1965 in Case 14-RC-5053, Ryan Heating Company, Inc., certified May 3, 1965 in Case 14-RC-5085, St. Louis Sheet Metal Company, certified March 30, 1965 in Case 14-RC-5063; and Western Sheet Metal Works, Inc., certified March 22, 1965 in Case 14-RC-5040. Consistent with its petitions in Cases 14-RC-5392 through 14-RC-5428, the Union disclaims interest in representing the employees of these employers in a multiemployer unit. In view of our Decision herein, we need not consider, nor do we decide, the issues raised by the Association's attempt to include these employers in its petition.

appropriate unit is a multiemployer unit in view of the past bargaining history of the parties and also in view of the fact that a number of the members of the Union change their employment from one to another member Employer of the Association.

For over 15 years, the Association has, on behalf of each Employer involved herein except as noted above, engaged in group collective-bargaining, and has entered into successive collective-bargaining agreements with the Union. The current agreement expires on June 30, 1966.

On March 4, 1966, more than 60 days and less than 90 days prior to the contract's anniversary date, by notice to the Association and to the individual Employers herein delivered by certified mail, the Union advised the Association that it was withdrawing from the multiemployer arrangement for future contract negotiations, effective June 30, 1966, and that henceforth the Union would engage in negotiations with each Employer only on an individual basis.

Our decisions in the *Evening News Association* and *Hearst Consolidated Publications* cases⁷ are applicable to the facts in the instant cases. In those cases, we held that the existing rules governing employer withdrawal from multiemployer bargaining should be applied on an equal basis to union withdrawal from such bargaining. Thus, in the instant cases, as the Union's notice to the Association and to each of the Employers in the multiemployer group was in writing and was given in a timely fashion with respect to the termination date of the contract and prior to the commencement of any multiemployer bargaining, and as the Union exhibited an unequivocal intention henceforth to conduct its negotiations with each Employer on an individual basis and to abandon permanently bargaining in a multiemployer unit, we find that the Union has effectively withdrawn from the multiemployer bargaining arrangement. Accordingly, and as no other union seeks to represent the employees involved in a multiemployer bargaining unit, we find that a question exists concerning the representation of the employees of each Employer in the single units sought by the Union. We shall direct separate elections herein as requested by the Petitioner in Cases 14-RC-5394 through 14-RC-5425, and shall dismiss the petition filed by the Association in Case 14-RM-310.

4. In accordance with the agreement of the parties, we find that the following employees of each individual Employer herein consti-

⁷ *The Evening News Association, et al.*, 154 NLRB 1482; *Hearst Consolidated Publications, Inc., et al.*, 156 NLRB 210.

tute a separate unit appropriate for the purposes of collective-bargaining within the meaning of Section 9(b) of the Act:

All journeymen and apprentice sheet metal workers, excluding office clerical and professional employees, guards, all other employees, and supervisors as defined in the Act.⁸

[The Board dismissed the petition in Case 14-RM-310.]

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

⁸ With respect to the Employer in Case 14-RC-5422, in accordance with the apparent agreement of the parties, we exclude all employees covered by our prior certification to another labor organization in Case 14-RC-4273.

⁹ An election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employers with the Regional Director for Region 14 within 7 days after the date of this Decision and Direction of Elections. The Regional Director shall make the list available to all parties to the elections. 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 elections whenever proper objections are filed. *Excelsior Underwear, Inc.*, 156 NLRB 1236.

Scott's, Inc. and International Union of Electrical, Radio and Machine Workers, AFL-CIO and Employees' Committee of Scott's, Inc., Party in Interest. Cases 7-CA-4743 and 4743(2). June 30, 1966

DECISION AND ORDER

On November 23, 1965, Trial Examiner John H. Eadie issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. The Trial Examiner also found that the Respondent had not engaged in certain other unfair labor practices and recommended that these allegations of the complaint be dismissed. Thereafter, the Respondent and the General Counsel filed exceptions to the Trial Examiner's Decision and supporting briefs, the Respondent filed a brief in reply to the General Counsel's brief, the Charging Party filed cross-exceptions and a supporting brief, and the Respondent filed a brief in answer to the cross-exceptions.

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