

American Pipe and Construction Co. and Local No. 11, International Brotherhood of Electrical Workers, AFL-CIO, Petitioner. Case 21-RC-10229

February 21, 1968

DECISION AND ORDER

BY MEMBERS BROWN, JENKINS, AND ZAGORIA

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Barton W. Robertson. Following the hearing, this case was transferred to the National Labor Relations Board in Washington, D.C., pursuant to Section 102.67(h) of the National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended. Subsequently, the Employer and the Petitioner filed briefs with the Board which have been duly considered.

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 this case to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

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. No question affecting commerce exists concerning the representation of certain 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 an election for a bargaining unit composed of all electricians and helpers, the electrical leadman, the warehouseman, and the oiler, working at the Employer's South Gate, California, plant. The collective-bargaining history at this plant shows that, in 1954, the Employer voluntarily recognized the Los Angeles Building and Construction Trades Council, AFL-CIO (herein called Council), as the exclusive representative for its production and maintenance employees.

In 1955 the Employer and Council executed a collective-bargaining agreement on behalf of the Council's six affiliated or constituent unions¹ covering their member employees at South Gate. Successive agreements were negotiated between the parties in 1960 and 1963, and the latest 3-year renewal agreement was signed by the parties on November 7, 1966. All of the foregoing collective-bargaining agreements culminated from joint negotiations; i.e., the employees' bargaining team is normally comprised of the Council's executive secretary, or his designee, and representatives from the several constituent unions. The Petitioner, however, failed to participate in the 1966 negotiations to any meaningful extent and has not executed the resulting bargaining agreement. In fact, on or about July 5, 1966, Petitioner, in two letters, notified the Employer and Council that it had rescinded the authority previously delegated to the Council to represent Petitioner in collective bargaining with the Employer. Further, Petitioner's letter to the Employer requested that the Employer accord recognition to Petitioner as the "sole and exclusive collective bargaining representative of all electricians heretofore covered under the Council-Company contract," and, that the parties agree on a date for commencing separate negotiations. Suffice it to note here, that the Council and the Employer took no action with respect to Petitioner's notices and requests, and, subsequently, Petitioner filed its petition for a separate representation election herein.

Parties' Contentions

The Petitioner contends that the Board should sanction its purported withdrawal from the multi-union² bargaining unit herein, citing, in general support of its position, recent decisions by the Board conferring on labor unions a right coequal to that enjoyed by employers to secede from multiemployer bargaining units.³ On the other hand, the Employer strenuously objects to the Petitioner's attempt to fragment the long-established multiunion bargaining unit, contending that, if permitted, it would seriously jeopardize labor relations stability in its plant. The Employer urges that the Board's decision in *Mallinckrodt Chemical Works*, 162 NLRB 387, constitutes relevant precedent for the Board's dismissal of the subject petition for separate representation. Finally, the Employer maintains that, the electricians sought to be

¹ The six constituent unions are: (1) Southern California District Council of Laborers, AFL-CIO, and its affiliated Local #300; (2) International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers Local #92, AFL-CIO; (3) International Union of Operating Engineers, Local Union #12, AFL-CIO; (4) Los Angeles County District Council of Carpenters, AFL-CIO; (5) Local #420 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; and (6) the Petitioner.

² Unlike a multiemployer bargaining unit which in its simplest form consists of one labor organization engaging in joint bargaining with a group of employers, the multiunion unit herein consists of six constituent unions maintaining a collective-bargaining relationship with a single employer.

³ See *The Evening News Association*, 154 NLRB 1494, enf.d. 372 F.2d 596 (C.A. 6).

separately represented do not comprise an appropriate unit for collective bargaining.

Based upon our consideration of the record herein, we find particular merit in the Employer's last-noted contention that in the circumstances of this case the employees sought by the Petitioner would not constitute an appropriate bargaining unit. We reach this finding because of the following reasons:

In 1954 the Employer recognized the Council as the bargaining agent for the six unions enumerated, *supra*. Accordingly, the parties' first collective-bargaining agreement, in June 1955, recited in article I, *inter alia*, that "The Los Angeles Building and Construction Trades Council is hereby designated as the agent of the 'Unions' for the purpose of negotiating and concluding, for and on behalf of the 'Unions' a collective bargaining agreement with the [Employer]." Subsequent renewals of the agreement between the parties in effect until the present time also included similar provisions. While it is true that the successive labor agreements give individual union shop stewards the right to handle the first two steps under the grievance and arbitration procedure⁴ and each union now has the right to negotiate new wage rates when its members are affected by job evaluation modifications, the single, joint bargaining agreement uniformly controls terms and conditions of employment for all production and maintenance workers in the plant. Illustrative of this finding is the contract proviso empowering the secretary of the Council to make final and binding decisions governing the assignment of work under the contract to a constituent union, and to determine which of the six unions shall represent employees working in the job classifications covered by the contract. Thus, the bargaining history, including the resulting agreements, constitutes a significant factor favoring the appropriateness of the existing plantwide bargaining unit.⁵

As for the electricians and helpers which Petitioner primarily seeks to represent, it is evident that the electrical maintenance functions they perform and the installations made by them frequently require a good working knowledge of their specialty. However, there is no formal apprenticeship training requirement for electricians sponsored by the Employer. Most of the present complement of top-rated grade XVII electricians transferred into electrical maintenance from other jobs in the plant. Essentially, the requisite competence to perform the work acceptably is achieved on the job, and

after a period of about 4 years an electrical worker progresses to the highest pay classification in the plant, grade XVII.

Another factor typifying the community of interest prevailing between the electricians and other classes of employees in the plant is evidenced by the Employer's supervisory structure. Electricians are supervised through the electrical leadman by the general foreman of maintenance, who also supervises eight or nine mechanics who belong to the Boilermakers, eight or nine carpenters who belong to the Carpenters Union, and three utility men who are members of the Laborers Union. Quite frequently, electricians devote an appreciable amount of time working cooperatively with other employees, such as machinists and mechanics, while installing electrical motors, controls, and wiring for certain unique concrete pipe-laying and fabricating machinery produced by the Employer, both for its own use and for resale.⁶ Although the record shows that electricians are treated as a separate group for the annual scheduling of vacations, they use all of the same plant facilities as do the other employees and, as mentioned *supra*, they are subject to the same standardized terms and conditions of employment pursuant to the terms of the bargaining agreement.

Therefore, upon our review of the record herein, we conclude that it will not effectuate the purposes of the Act to permit the disruption of the existing, established multiunion production and maintenance unit by directing an election for separate representation, as requested by the Petitioner. We find that the interests served by maintenance of stability in the existing bargaining unit of production and maintenance employees outweigh the interests served by permitting electricians to change their mode of representation and thereby disrupt the existing pattern of representation.⁷

In the light of the electricians' community of interest with other personnel in the existing plantwide production and maintenance unit, the inclusion of the electricians in that unit since 1954, and, in the absence of any compelling countervailing considerations, we find that the unit sought by the Petitioner is inappropriate. Accordingly, we shall dismiss the petition.⁸

ORDER

It is hereby ordered that the petition filed herein be, and it hereby is, dismissed.

⁴ The Council's secretary then takes up the grievance if a satisfactory solution has not been achieved as a result of processing through the first two steps.

⁵ See *General Metalcraft, Inc., Olympia Division*, 106 NLRB 1131.

⁶ Electricians have spent as much as 300-500 hours performing electrical work in building each Helical Weld Machine in conjunction with other employees.

⁷ As for the interest of the electricians, we note that five of the best qualified electricians in this plant are currently receiving the highest pay

provided in the classification schedule under the present contract at the grade XVII level. Although this case does not directly raise craft severance issues, we note that the Board in *Mallinckrodt Chemical Works, supra*, and in other craft severance cases has balanced the respective interests of the group sought to be severed against the interests of the larger group.

⁸ *General Metalcraft, Inc., Olympia Division, supra*.