

Woolwich, Inc. and Teamsters Local 107, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 4-RM-700

September 29, 1970

DECISION AND ORDER

**BY CHAIRMAN MILLER AND MEMBERS FANNING
AND BROWN**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Craig D. Leffler, Hearing Officer. On February 12, 1970, the Regional Director issued his Decision and Order in which he found that the Employer's petition did not raise a question concerning representation and ordered that the petition be dismissed. Thereafter, the Employer filed a timely request for review.

On March 12, 1970, having treated the Employer's request for review as a motion for reconsideration, the Regional Director issued and caused to be duly served on the parties an order vacating decision and order and remanding case for further hearing, together with a notice of reopened hearing. On March 25, 1970, a further hearing was held before the Hearing Officer at which all interested parties were allowed to participate. Thereafter, on April 7, 1970, and pursuant to the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Regional Director transferred this case to the Board for decision.

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.

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

Upon the entire record in this case, including the brief filed by the Employer, the Board finds:

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

2. Teamsters Local 107, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, is a labor organization within the meaning of the Act.

3. Milton K. Morris, Inc., herein called Morris, Inc., is a corporation whose stock is owned in its entirety by Emma Morris, who functions as its princi-

pal executive officer. Morris, Inc., is a contract carrier whose primary functions consist of the operation of a trucking line and a break-bulk facility. The principal customers of Morris, Inc., are multioutlet food chains located in the Philadelphia, Pennsylvania, area. For these customers Morris, Inc., picks up large shipments of sugar, soap, and related products from the manufacturers, transports these commodities to its break-bulk facility, breaks the shipments down into smaller quantities, and makes the deliveries to the customers' individual outlets. Morris, Inc., employs truckdrivers and warehousemen who are represented for purposes of collective bargaining under a contract between the Union and Motor Transport Labor Relations, Inc., a multiemployer association of which Morris, Inc., is a member.

The break-bulk facility utilized by Morris, Inc., consists of a dock and a small warehouse with insufficient capacity for any large amount of long term storage. Customers of Morris, Inc., approached Charles Morris, the secretary of the corporation and the son of Emma Morris, and requested that Morris, Inc., enlarge its warehouse facilities to provide for long term storage of certain commodities, such as picture frames. Because of the inability or unwillingness of Emma Morris to expand the facilities of Morris, Inc., Charles Morris, under the name of Woolwich, Inc., built a warehouse facility which is wholly owned and operated by Charles Morris and his wife. The Woolwich warehouse began operations in July 1969 and at all times since that date its operations have been limited to the warehousing function. Woolwich neither owns nor operates trucks, and merchandise is brought to and delivered from the warehouse by trucks of Morris, Inc., and occasionally by other carriers.

Merchandise intended for warehousing by Woolwich is delivered to its dock by the trucks of Morris, Inc., or other carriers. These trucks are unloaded by employees of Woolwich, who store the merchandise in the warehouse pending an order from the customer. When a customer places an order for the delivery of merchandise, the order is generally made up by Woolwich employees and taken to its dock, where the employees load the merchandise on trucks for delivery. In some instances, however, Woolwich employees make up the order, and deliver it to one of the access doors to the premises of Morris, Inc., from where it is taken over and loaded on the trucks for delivery by Morris employees.

Notwithstanding the physical proximity of Woolwich and Morris, Inc., both concerns are operated as separate entities. Except for Charles Morris, who functions as an officer of both corporations, the management of the day-to-day operations of the two

concerns is entirely separate. The immediate supervision of the employees of Woolwich is the concern of its superintendent, Herbert L. Wagoner, who was formerly a dispatcher and safety director for Morris, Inc., but who has supervised the employees of Woolwich on a full-time basis since approximately September 1969. Wagoner has no authority over the employees of Morris, Inc., and, similarly, those who supervise the day-to-day functions of the employees of that concern have no authority with respect to the employees of Woolwich.

All of the employees who have been employed by Woolwich since it commenced operations have been newly hired and have no history of employment with Morris, Inc. Except for one warehouse employee who occasionally drives a truck for Morris, Inc. after the conclusion of his regular hours of work at Woolwich, there is no interchange of employees between the two concerns, and there is no history of transfer. The employees of each concern utilize separate time-clocks. The wages and terms and conditions of employment of the employees of Morris, Inc., are established by the terms of the multiemployer contract with the Union, and they differ substantially from the wages and benefits accorded by Woolwich to its employees. Interchange of equipment between the two concerns is limited to infrequent use of each other's forklift. Although Woolwich did use office space and the same address and telephone number as Morris, Inc., during the initial stages of its operations, a separate office was being constructed on the Woolwich premises at the time of the hearing herein.

There is no history of collective bargaining for the employees of Woolwich. On several occasions after July 1969 representatives of the Union requested that Charles Morris recognize the Union as the bargaining representative of the Woolwich employees, contending that these employees are covered by the terms of the multiemployer contract to which Morris, Inc., is signatory. When these overtures were refused, the Union filed a grievance against Morris, Inc., which culminated in an arbitration proceeding before a bipartite panel established under the terms of the multiemployer bargaining agreement. Subsequently the arbitration panel determined that the work being performed by the employees of Woolwich fell within the scope of the existing agreement. In the interim, on December 2, 1969, Woolwich filed the instant representation petition.

The Union contends that it has never made any demand to represent the employees of Woolwich as a separate unit, and argues, accordingly, that no question of representation exists. The Union also contends, contrary to Woolwich and Morris, Inc., that

the employees of Woolwich constitute an accretion to the multiemployer bargaining unit which incorporates the employees of Morris, Inc. The Union argues that the Board should accede to the determination of the arbitration panel to this same end.

We find it clear from the record that the Union does not, and never has, sought to represent the employees of Woolwich in a separate bargaining unit. In view of this, we find that no question of representation exists within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.¹ However, we also deem it appropriate to consider the contentions of the parties with respect to the accretion issue and the effect of the award of the arbitration panel.

The evidence outlined above reveals that Woolwich and Morris, Inc., are separately owned and essentially separately managed. The day-to-day operations of the two concerns are supervised by different groups of managers and supervisors whose functions and authority do no overlap. Although the two entities occupy contiguous premises, their employee complements are distinct, there is no interchange or transfer, and there is a minimal amount of opportunity for contact between the two groups of employees. Notwithstanding the evidence that Woolwich and Morris, Inc., serve essentially the same customers, there is, nevertheless, a separateness and distinction in their functions and operation: Morris, Inc., being engaged in a trucking and break-bulk operation, while the function of Woolwich is devoted exclusively to the operation of a warehouse.

As to the award of the arbitration panel, the question of whether the existing multiemployer contract was intended or can be construed to cover those employees of Woolwich who were hired after its effective date, is a question for the arbitration panel, but its conclusion is not binding on the Board. For assuming that the arbitration panel answered the question as it did, in the affirmative, it is nevertheless the obligation of the Board to determine whether, absent the consent of the employees, they constitute an accretion to the existing multiemployer unit.² On the facts before us, such a finding is not warranted here. Accordingly, and as we have determined that no question concerning representation exists, we shall dismiss the petition.

ORDER

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

¹ *Bowman Building Products Division*, 170 NLRB No. 30

² *Patterson-Sargent Division of Textron Inc.*, 173 NLRB No. 203 and *Beacon Photo Service, Inc.*, 163 NLRB 706