

Manufacturing Woodworkers Association of Greater New York, Inc. and District Council No. 9, of New York City of the Brotherhood of Painters, Decorators and Paperhangers of America, AFL-CIO, Petitioner. Case 2-UC-27

November 7, 1969

**DECISION AND ORDER DENYING
PETITION TO CLARIFY UNIT**

**BY CHAIRMAN McCULLOCH AND MEMBERS
JENKINS AND ZAGORIA**

Upon a petition duly filed by the Petitioner under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held on various dates between November 21, 1968, and June 18, 1969, before Haywood E. Banks, a Hearing Officer of the National Labor Relations Board. On July 1, 1969, the Acting Regional Director for Region 2 issued an order transferring this case to the Board. Thereafter the Employer, the Petitioner, and District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO, hereinafter called the Intervenor, filed timely briefs with the Board.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, 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 briefs filed by the parties, the Board finds:¹

1. The Employer, a multiemployer bargaining association (hereinafter called the Association) comprised of 45 wood products manufacturers who do business in the Greater New York metropolitan area, 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 Petitioner and the Intervenor are labor organizations within the meaning of the Act.

3. Members of the Employer Association are engaged in the manufacturing of paneling, architectural woodwork, show and display cases, cabinets, desks and related products. Each of the member-employers operates a shop where it engages in all phases of the manufacturing process from the cutting and assembling of raw materials to finishing and wiring. Some of the employer-members also perform installation work on the premises of the purchasers of their products.

¹The Intervenor contends that the petition should be dismissed for failure to conform to certain provisions in the Board's Rules and Regulations. The record reveals that the Intervenor received sufficient notice of the matters involved in this case, and in the absence of any showing of prejudice its contention is hereby denied.

For many years the Petitioner represented "wood finishers" employed in the shops of 21 of the 45 member-employers who comprise the Association. Since at least 1950 the Petitioner and the Association have been parties to a series of collective-bargaining agreements covering the "wood finishers", the most recent of which expired in 1967. Also for many years the Association and the Intervenor have been parties to a series of collective-bargaining agreements applicable to employees in various classifications and "all other employees doing production work" in the shops of all 45 member-employers. The record reflects that although the unit represented by the Intervenor did include some employees who engaged at least in part in wood finishing processes, the classification of "wood finishers" was not named in any of the Intervenor's contracts through 1967.

After the expiration of their 1964-67 bargaining agreement the Petitioner and the Association conducted numerous bargaining sessions, but were unable to reach agreement on certain matters including, among others, a provision on union security. A strike ensued, was subsequently settled, and the parties resumed negotiations, but no agreement has ever been reached. In the interim, on some undetermined date following the expiration of their 1964-67 bargaining agreement, the Association and the Intervenor entered into a new agreement for the term 1967-70, which for the first time included the classification of "wood finishers."

On October 31, 1968, the Petitioner filed the instant petition asking the Board to clarify the bargaining unit recognized by the Association under the terms of the Intervenor's 1967-70 contract. Insofar as we understand the Petitioner's contention, it argues that on the basis of greater skills and bargaining history the "wood finishers" employed in 21 of the member-employers' shops are inappropriately included in the unit represented by the Intervenor and should, accordingly, be removed from that unit and placed in a unit coextensive with the bargaining unit previously represented by the Petitioner. The Employer Association and the Intervenor argue that the petition should be dismissed relying, *inter alia*, on their current contract, and arguing that a question concerning representation exists which cannot be resolved in a unit clarification proceeding.

Upon the foregoing facts, and considering the record as a whole, it is clear that the Petitioner's unit clarification action is inappropriate to resolve the dispute over representation of "wood finishers" employed in 21 shops of employer-members of the Association. The Petitioner is not currently recognized by any of the employer-members, and insofar as the record reflects has no contractual right to represent any of their employees. On the contrary, insofar as the record reflects and the Board may determine in this proceeding, the Intervenor is the duly recognized and contractual

representative of the "wood finishers," and the instant petition raises a question concerning representation which cannot be resolved in the

proceeding now before us.² Accordingly, we shall dismiss the petition.

²Our Decision herein is not to be construed as determinative in any other proceeding involving the conflict between the Petitioner and other parties over the right to represent the "wood finishers," and we intimate no findings or conclusions on the unfair labor practice charges currently pending before the Regional Director for Region 2

ORDER

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