Wm. T. Kirley Lumber Company *and* Robert F. MacLeod, Petitioner, *and* Local 379, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Case 1–RD–617

March 22, 1971

DECISION ON REVIEW AND ORDER

BY CHAIRMAN MILLER AND MEMBERS FANNING AND BROWN

On September 21, 1970, the Regional Director for Region 1 issued a Decision and Direction of Election in the above-entitled proceeding, in which he found appropriate a single-employer unit of the Employer's employees. Thereafter, the Union, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations and Statements of Procedures, Series 8, as amended, filed a request for review in which it contended, *inter alia,* that only a multiemployer unit is appropriate.

On October 20, 1970, the Board by telegraphic order granted the request for review and postponed the election pending Decision on Review.[1] Thereafter, the Employer filed a brief on review.

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 considered the entire record in this case with respect to the issues under review, and for the reasons set forth below finds, contrary to the Regional Director, that the petitioned-for unit is inappropriate.

The Petitioner seeks to decertify the Union in a single-employer unit consisting of all the Employer's drivers and yardmen at its place of business in Dorchester, Massachusetts. The Employer, in agreement with the Petitioner, asserts that this single-employer unit is appropriate. The Union, however, contends the petition should be dismissed because of a controlling history of collective bargaining on a multiemployer basis. We agree with the Union.

The record shows that since the early 1950's the Employer has been a member of the Greater Boston Lumber Dealers Association, whose membership is composed of area lumber dealers (12 or 13 as of the time of the 1970 negotiations). The Association exists for the purpose of collective bargaining and has negotiated a series of collective-bargaining agreements with the Union for its members.

As the termination date for any given agreements approaches, members of the Association elect a committee to bargain collectively with the Union. In the ensuing negotiations, the bargaining committee speaks for all the member-dealers on issues which are common to, or affect, the overall dealer group. After these issues are resolved by negotiation, they comprise, in the language of the Employer's brief, the "basic items" of agreement. They have included such matters as pay, hours of work, union security, apprenticeship, holidays, overtime, union pension fund contributions, vacations, grievances, and arbitration.

The most recently expired contract negotiated by the Union and the Association covered a period from May 1, 1967, to April 30, 1970.[2] While each employer-member, including Kirley, had signed a separate agreement with the Union for the 1967–70 period, the separate agreements were substantially identical[3] and covered the items listed above.

On March 19, 1970, representatives of these association members, including Walter T. Kirley, Jr., of the Employer, elected a bargaining committee, designated Herbert Bearak as chairman, and discussed the impending negotiations together with any articular problems or ideas the various dealers may have had. Kirley authorized Bearak to negotiate for the Employer not only with respect to the common items such as those contained in the 1967–70 contract, but also with regard to some problems caused by the institution of a second shift. Bearak replied that this latter item "would not be part of the bargaining as such by the committee" because it did not affect the overall dealer group, but that he would notify the Union that Kirley had certain individual problems it wished to discuss with the Union.[4] At the first negotiating session with the Union, Bearak did so notify the Union.

On March 23, 1970, the association bargaining committee and the Union held their first meeting to negotiate the overall terms and conditions of the new contract. The parties met from time to time between this date and May 1, 1970. On may 1, the Union struck; but the parties continued to meet until May 26, 1970, when they reached a settlement. The terms of the

[1] On November 2, 1970, the Board denied the Employer's motion to vacate the grant of review

[2] In the 1970 negotiations, the Association represented the same members who had participated in the 1967-70 agreement This group was somewhat smaller than the number of members as of 1966

[3] So far as the record shows, the only variation among these agreements was contained in the agreement signed by C H Spring Company, Inc, division of member-dealer L Grossman and Sons, Inc That contract, as a result of supplemental negotiations between the Union and that employer, permitted Grossman to have a certain number of sales trainees work alongside union personnel under certain conditions, and allowed Grossman to employ one tallyman to work certain nights at straight time rather than time and a half

[4] Bearak pointed out to Kirley that, after the overall negotiations for the preceding contract had been completed, Grossman separately negotiated its own addendum (described above) with the Union, thus Kirley would be following an established procedure for the negotiating of an individual employer issue

settlement included nine specific changes in the provisions of the most recently expired contract, although the same basic areas were covered---pay, hours of work, union security, apprenticeship, holidays, overtime, union pension fund contributions, vacations, grievances, and arbitration. The settlement also reiterated the stipulation that specific addenda to the Kirley contract (and the Grossman contract) "must continue to be negotiated." On July 17, 1970, the instant petition was filed.

As stated above, the Petitioner and the Employer assert that a single-employer unit is appropriate and that a multiemployer unit never existed.[5] In this regard, the Employer relies on the individual contracts signed by each employer for 1967–70, and the claim that the recognition clause of the Employer's expired 1967–70 contract is limited in scope to a unit of its own employees; on the contention that the single-employer unit is the only one for which the Employer has historically bargained; on the asserted lack of intent by association members and the Union to merge all the employees of all the employers into a single unit; on the Association's lack of bylaws or formal organization, and the changes in its membership; on the variances in some contract terms and conditions of work; and on the direct negotiations for such variances. We find these contentions without merit.

"What is essential" to establish a multiemployer unit "is that the employer member has indicated from the outset an intention to be bound in collective bargaining by group rather than by individual action."[6] We think that intention is clearly established in this case by the facts outlined above. Thus, the Employer has maintained membership in the Association for many years; the Association has been authorized by its members to represent them as a group in collective bargaining and has done so, dealing with wages, hours, and other basic terms and conditions of employment of the employees of all of them; Kirley has been party to the contracts negotiated by the association bargaining representative; the individual contracts of each employer-member have been identical to those of other association members, except for matters which were relevant only to specific employer-members; and Kirley authorized the Association to negotiate for it during the 1970 negotiations.

While the 1967–70 agreement entered into by Kirley states it was "by and between" the Employer and the Union, was signed by these parties, and appears to grant the Union recognition as representative of *this* Employer's employees, these details are merely incidental byproducts of an established multiemployer bargaining relationship. And, in circumstances such as those here present, the Board does not give controlling weight to the technicality of separate, signed agreements for purposes of determining the existence or nonexistence of multiemployer units.[7]

We also disagree with the Employer's claim that the Union has historically bargained for the single-employer unit now petitioned for. The only evidence of single-employer bargaining for Kirley is the 1970 variation dealing with the matter of its second shift. That evidence, in the context of the overall bargaining history, is hardly sufficient to support the Employer's claim. For, as the Board has held, the exercise of a mutually recognized privilege to bargain individually on limited matters, as in the present case, is not inconsistent with the concept of collective bargaining in a multiemploye unit.[8]

Finally, where as here employers have evidenced an intention to be bound in collective bargaining by group action, that intent is not defeated by the Association's lack of bylaws or formal organization,[9] or by changes in its membership.[10]

In view of the history of bargaining on a multiemployer basis, the failure of the Union and the Employer to withdraw from such bargaining and the fact that the instant decertification petition was filed upon the virtual conclusion of multiemployer negotiations, we find that the only appropriate unit at this time is multiemployer in scope.[11] We shall therefore dismiss the petition herein.

ORDER

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

[5] There is no contention that, assuming a multiemployer unit existed, the Employer withdrew therefrom

[6] *The Kroger Co*, 148 NLRB 569, 573.

[7] *Wards Cove Packing Company, Inc*, 160 NLRB 232, 235, *Korner Kafe, Inc*, 156 NLRB 1157, 1161, *Johnson Sheet Metal, Inc*, 179 NLRB No 104, TXD secs II A and F (1) Indeed, where as here employers consider themselves bound by the results of joint negotiations, the Board has held, in an analogous situation, that it is immaterial that a master agreement specifies it is executed severally and not jointly, for such language "only indicates the individual responsibility of each employer *resulting from* the multiemployer bargaining" *Wards Cove Packing, supra,* 235, fn 10

[8] *The Kroger Co*, 148 NLRB 569, 573

[9] *Id* at 571

[10] *Wards Cove Packing Co*, 160 NLRB 232, 236

[11] *Thomas H Marrow Trucking Co*, 155 NLRB 271, *The Kroger Co*, 148 NLRB 569; *Quality Limestone Products, Inc*, 143 NLRB 589 Because of our disposition of the unit issue herein, we find it unnecessary to, and do not, reach the contentions of the parties on the contract-bar question