

Germantown Development Co., Inc., Employer—Petitioner and Superior Kuetemeyer Co., Inc., Employer—Petitioner and Carpenters' District Council of Milwaukee County and Vicinity of the United Brotherhood of Carpenters and Joiners of America, AFL—CIO. Cases 30—RM—284 and 30—UC—82

November 27, 1973

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS
FANNING AND PENELLO

Upon petitions duly filed by Germantown Development Co., Inc. (hereinafter referred to as Germantown), in Case 30—RM—284 and by Superior Kuetemeyer Co., Inc. (hereinafter referred to as Superior), in Case 30—UC—82, under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Shirley A. Bednarz of the National Labor Relations Board. Following the close of the hearing, the Regional Director for Region 30 transferred these cases to the Board for decision. A brief was filed by Superior.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

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

1. Germantown and Superior are engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
2. Carpenters' District Council of Milwaukee County and Vicinity of the United Brotherhood of Carpenters and Joiners of America, AFL—CIO (hereinafter referred to as the Union), is a labor organization within the meaning of the Act.
3. Superior is a residential and commercial plumbing contractor. Prior to February 1973, a small portion of its business, approximately 3 to 4 percent, consisted of real estate development in which all of the carpentry work was subcontracted. In connection with this aspect of its business, Superior was the contractor on scattered construction sites being developed for the Milwaukee Housing Authority. After two of Superior's carpentry subcontractors successively went into bankruptcy, Superior, in February 1972, hired two carpenters to complete the work.

¹ The bylaws of the Association clearly provide that subsidiary companies are not parties to, and are thus not bound by, any contracts negotiated on behalf of their parent companies by the Association.

² The collective-bargaining agreement itself contains no reference to subsidiary companies of signatory employers. The work covered by the agreement is described in general terms as "bargaining unit work

Superior is a member of the Associated Mechanical Contractors, Inc., which is a member of the Allied Construction Employers Association, Inc. (hereinafter referred to as the Association), which has a contract with the Union.¹ Superior thus was a party to the collective-bargaining agreement between the Association and the Union covering Superior's two carpenter employees. This contract expired in May 1972 and a new contract was entered into by the Association and the Union to expire in May 1975.² Superior, however, has employed no carpenters since February 1973, when the above job was substantially completed. Superior's only other construction related job was at a project in Fond du Lac, Wisconsin, at which it subcontracted all carpentry work. Superior has since phased out all its real estate development operations and is presently engaged exclusively in plumbing contracting.

Germantown was founded in 1961 by parties unconnected with Superior for the purpose of acquiring and developing real estate. In early 1971, Superior acquired all of the stock of Germantown and continued it for the same purposes. Germantown owned a tract of land at Lake Park Village, Wisconsin, on which it subsequently erected a plant to manufacture prefabricated modular building components for use at its adjacent housing project. In September 1972, the plant was completed and Germantown began operations in the plant. It hired six employees to work in the plant. The actual construction work on the housing project was subcontracted.

In September 1972, Hashek, the Union's business representative, visited the Germantown plant and asked that Riead, the plant manager, hire members of the Union to work in the plant. This demand was repeated orally and in writing during October. Riead rejected all of the Union's requests.

In November 1972, the Union filed a grievance against Superior pursuant to the terms of its collective-bargaining agreement with Superior, asserting that Superior was violating the contract by failing to apply its terms to the Germantown plant employees. The Union argued that Superior and Germantown were the same employer and that, therefore, the Germantown plant employees were an accretion to the unit of Superior employees covered by the contract. The Union relied on the fact that Superior and Germantown were commonly owned and had identical officers and directors.³ The Union also alleged that Germantown plant employees were

historically covered by this agreement and normally performed by Apprentice and Journeyman carpenters over which the Employer has control." The contract applies to "all workmen performing bargaining unit work historically covered by this agreement and covered by the occupational and geographic jurisdiction of the union."

³ Russell W. Spitz is president and a director of both corporations. Spitz

performing work covered by the agreement. Pursuant to the agreement's grievance provisions, a bipartite panel was selected, consisting of two Superior and two union representatives. The panel became deadlocked and failed to resolve the grievance. The parties then selected a single arbitrator to decide whether, under the agreement, Germantown was an "employer" and whether the Germantown plant employees were performing bargaining unit work. No date for final arbitration had been arranged at the time of this hearing. In the meantime, Germantown and Superior filed their respective petitions.

With regard to Germantown's petition, the Union contends that it has never made any demand on Germantown and, indeed, does not wish to represent the plant employees as a separate unit. It argues, accordingly, that no question of representation exists regarding the Germantown employees and that the petition should therefore be dismissed. Rather, the Union seeks to represent these employees as part of the Superior unit and has disclaimed any interest in representing them as employees of Germantown. In view of the Union's disclaimer, we find that no question concerning representation exists within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act.⁴ Accordingly, we shall dismiss the petition in Case 30-RM-284.

As to Superior's petition in Case 30-UC-82, the Union contends initially that we should defer our consideration of this matter until the arbitrator has had an opportunity to rule on the matters of contract interpretation submitted to him. We do not agree. The central issue in this case, as recognized by the Union, is whether the Germantown plant employees are an accretion to the Superior bargaining unit as described in the agreement between the Association and the Union. We have consistently held that, notwithstanding an arbitrator's findings on matters of contract interpretation related to accretion issues, it is the obligation of the Board to determine whether, absent the consent of the employees, the employees constitute an accretion to an existing bargaining unit.⁵ Thus, regardless of how the arbitrator might resolve the issues before him, the Board must still pass upon the question of accretion. Therefore, we shall consider this case on its merits.

On the merits, the Union again contends that Germantown and Superior are the same employer; that the Germantown plant employees are therefore employees of Superior; that they perform bargaining

unit work; and that they are thus an accretion to Superior's carpenter bargaining unit. The Union argues that Germantown's and Superior's operations are integrated; that the companies have identical officers and directors; that a common link is President Russell Spitz, who is actively involved in the operations and labor relations of both; that the companies have shared equipment and interchanged employees; and that both companies share office facilities, bookkeeping services, and have a common telephone number.

Because we find, for the reasons discussed below, that the Superior and Germantown employees are not suitable units for merger by accretion, we do not reach or pass upon the separate or joint employer issue raised by the Union.

The evidence establishes, and we find, that Superior is presently engaged solely in commercial and residential plumbing contracting and that its employees, all plumbers, are represented by a plumbers' union. Its real estate division was phased out with the acquisition of Germantown, and Superior has employed no carpenters since February 1973. Prior to February 1973, the work performed by Superior's carpenter employees, described in broad and general terms in its contract with the Union, was confined to construction site work. Thus, at the present time, Superior is not engaged in any carpenter bargaining unit work and there are no employees in its carpenter bargaining unit.

On the other hand, Germantown's plant employees are engaged solely in the manufacture of prefabricated building components. None of these plant employees were ever employed by Superior. They are unskilled workers who perform a variety of functions on each prefabricated unit, including carpentry, plumbing, electrical, and painting work. These employees work exclusively inside the plant, except for four employees who spend approximately 10 percent of their working time at the nearby construction site erecting the prefabricated units for testing and training purposes. The employees of Germantown work under separate supervision and they do not interchange with Superior's employees.

The evidence, therefore, does not support the Union's contention that the Germantown plant employees are performing "unit work" as contemplated by Superior's contract with the Union. To the contrary, the evidence establishes, and we conclude, that Germantown's plant employees constitute a

is not involved in the day-to-day operations or labor relations matters of either corporation and spends most of his time coordinating Germantown's overall operations. The evidence establishes that Spitz hired no employees of Superior but hired the managers of Germantown's three divisions—plant, expediting, and engineering—including Plant Manager Riead. Ronald Gehrman, secretary and treasurer of both corporations, is Superior's plumbing manager. He has no authority over the day-to-day operations or

labor relations matters of Germantown. There is no evidence to indicate that the directors have participated in establishing or administering labor relations policy at either corporation

⁴ *Aerojet-General Corporation*, 185 NLRB 794, *Bowman Building Products Division*, 170 NLRB 312.

⁵ *Woolwich, Inc.*, 185 NLRB 783, *Combustion Engineering, Inc.*, 195 NLRB 909.

separate and distinct bargaining unit enjoying a community of interest that is separate and apart from the unit of employees at Superior. Consequently, we find the Germantown unit of employees is not suitable for merger by accretion to Superior's contract unit which presently has no employees.⁶

Accordingly, we shall clarify the unit described in the collective-bargaining agreement between the Association and the Union, insofar as it applies to Superior's employees, to exclude the Germantown plant employees.

ORDER

It is hereby ordered that the bargaining unit

⁶ *The Great Atlantic and Pacific Tea Company*, 140 NLRB 1011, 1021.

encompassing the carpenter employees of Superior Kuetemeyer Co., Inc., Milwaukee, Wisconsin, who are represented

by Carpenters' District Council of Milwaukee County and Vicinity of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO, be, and it hereby is clarified by specifically excluding therefrom all plant employees employed by Germantown Development Co., Inc., Germantown, Wisconsin.

IT IS FURTHER ORDERED that the petition in Case 30-RM-284 be, and it hereby is, dismissed.