

Milwaukee Independent Meat Packers Association, Employer-Petitioner and Meat & Allied Food Workers Local Union No. 248, AFL-CIO, affiliated with Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO. Case 30-RM-343

April 15, 1976

DECISION AND DIRECTION OF ELECTION

BY CHAIRMAN MURPHY AND MEMBERS JENKINS
AND WALTHER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Shirley A. Bednarz. Following the Union's request, and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, by direction of the Regional Director for Region 30, this case was transferred to the National Labor Relations Board for decision. Thereafter, the Petitioner and the Union filed briefs.

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.

The Board has considered the entire record in this case and makes the following findings:

1. The Milwaukee Independent Meat Packers Association, hereinafter MIMPA or the Employer, is an association of companies engaged in the meat processing and packaging industry. The association was established in 1959 to promote and advance the meat packing industry by various means, including the establishment of stable labor relations. The parties stipulated that during the course of the past calendar year, a representative period, MIMPA collectively, through its members, purchased and received goods valued in excess of \$50,000 directly from points located outside the State of Wisconsin.

The parties stipulated, and we find, that 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. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act.

4. The Employer seeks an election in a unit of all production and maintenance employees, including

truckdrivers, employed by members of MIMPA, and excluding office clerical employees, buyers, and supervisors as defined in the Act. MIMPA further argues that employees presently working at the former Northern Packing Company, Inc., hereinafter Northern, and United Packing Corp. Inc., hereinafter United, facilities, now operated by MIMPA member Peck Meat Packing Corporation, hereinafter Peck, and its wholly owned subsidiary, Moo-Battue, Inc., are an accretion to the bargaining unit. The Meat & Allied Food Workers Local Union No. 248, affiliated with Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, hereinafter the Union, on the other hand, asserts that the only appropriate units are the employees at each of the member companies. Stressing that it became collective-bargaining representative on a plant-by-plant and employer-by-employer basis, the Union argues that, upon proper notice, it can withdraw from collective bargaining with MIMPA and resume bargaining with the association members on an individual basis. Further, the Union contends that at no time has it consented to bargain with Moo-Battue, and the Board should not compel it to do so contrary to its wishes. In the alternative, the Union asserts that the employees at Moo-Battue and Peck's expanded facilities are not an accretion to the unit.

Since 1959 the Union and MIMPA have engaged in collective bargaining. Over the years they have entered into successive collective-bargaining agreements, the latest of which expired on January 10, 1975. Member companies signing that contract were: August Born & Son, Inc.; City Dressed Beef Company; Donner Packing Company; Milwaukee Dressed Beef Company; Milwaukee Meat & Provision Co.; Nacker Packing; Northern Packing Company, Inc.; Peck Meat Packing Corporation; South Side Company; Strauss Bros. Packing Company; United Packing Corp. Inc.; and Wisconsin Packing Co. Since execution of the last, now expired, agreement, a number of the above companies have either left the association or gone out of business, and at the time of the hearing MIMPA consisted of seven members.

On January 25, 1975, when the Union commenced an economic strike against MIMPA and its members,¹ the bargaining unit consisted of approximately 750 employees. During the course of the strike many MIMPA members replaced the strikers with new employees, and just prior to the filing of the RM petition several member companies discharged approximately 45 employees for alleged strike misconduct. The Union filed unfair labor practice charges con-

¹ There is no evidence before the Board that the strike has been terminated during or subsequent to the hearing.

cerning these discharges.² Additionally, during the course of the strike, two MIMPA members, Northern and United, ceased doing business and terminated their some 192 employees. Another member, Peck, in its own name and through a wholly owned subsidiary, Moo-Battue, Inc., took over facilities previously utilized by the defunct companies. To operate the new facilities, Peck and Moo-Battue transferred employees from Peck's old plant, as well as hired new employees.

Upon the present state of record, the issues before the Board are the propriety of the Hearing Officer's rulings at the hearing and the appropriate unit in which to conduct the election.

I. PROCEDURAL ISSUES

At the preelection hearing held on January 12, 1976, Hearing Officer Bednarz limited the issues to whether the employees working at the expanded Peck and Moo-Battue facilities were an accretion to the unit.

The Union, however, unsuccessfully sought to expand the range of issues to be litigated. Initially, the Union moved to dismiss the petition on the basis that "objective considerations" necessary to support the RM petition were absent. Upon the Hearing Officer's denial of its motion, the Union requested that the Hearing Officer state on the record the basis for the Regional Director's determination of objective considerations. The Hearing Officer denied this request, ruling that the finding of objective considerations is an administrative determination not subject to litigation. The Union now excepts to the Hearing Officer's refusal to state on the record the basis for the Regional Director's determination that objective considerations supporting the RM petition exist, asserting that it must be apprised of the reasons for the Regional Director's conclusion so that it might raise the legal sufficiency of that determination. We find the Union's exception is without merit. The Regional Director's finding that objective considerations exist, like the showing of interest in a petition for certification, is an administrative determination not subject to litigation.³

The Union further sought to litigate the eligibility to vote of: (1) striker replacements, (2) the 192 terminated employees of Northern and United, and (3) the approximately 45 discharged striking employees. With regard to the former Northern and United employees, the Union argues that the Peck and Moo-Battue operations at the newly acquired plants are

successors to the two former MIMPA companies. Thus, the Union asserts that the former Northern and United employees' employment rights continue to date and that as unit members these employees are eligible to vote. We find no merit to the Union's exceptions to the Hearing Officer's ruling precluding litigation of this issue. Any rights to continued employment that the former Northern and United employees might presently have are directly related to the propriety of the cessation of Northern and United's business and transfer of the facilities to Peck and Moo-Battue. As such, these rights and the former employees' eligibility to vote are the subject of unfair labor practice charges.⁴ It is well-established Board policy that an unfair labor practice allegation may not be litigated in a representation proceeding.⁵ Thus, we find that the Hearing Officer properly precluded the litigation of an unfair labor practice allegation in this representation proceeding. Accordingly, we affirm the Hearing Officer's ruling that eligibility of the former Northern and United employees to vote was not a proper issue at the hearing herein.

As to the other eligibility issues, the Union urges that since the large number of strike replacements and discharged employees involved will necessarily affect the election results, the Board should make a preelection determination of their eligibility to vote. We find no merit in the Union's contention. Well-established Board policy provides for the resolution of the eligibility of strike replacements⁶ and discharged employees⁷ by the postelection challenge procedure. Accordingly, we affirm the Hearing Officer's rulings precluding litigation of these issues.

The Union also excepts to the Hearing Officer's revocation of the *subpoenas duces tecum* served on MIMPA and its members.⁸ The Union contends that

⁴ The Union filed unfair labor practice charges in which the Union's successorship claim was in issue. The Regional Director dismissed those charges. The Union, in its brief, asserts that this dismissal is now being appealed to the General Counsel.

⁵ *Texas Meat Packers, Inc., Texas Meat and Provision Co., et al.*, 130 NLRB 279 (1961).

⁶ *The Pipe Machinery Company*, 76 NLRB 247 (1948).

⁷ *McCarthy Enterprises, Inc., t/a Community Motors*, 128 NLRB 60 (1960).

⁸ The Union sought to obtain the following information:

(1) employers payroll records after January 25, 1975, including name, address, job classification, hourly wage rate, hours worked, gross weekly earnings and any other payments made to employees;

(2) written documents or memoranda relating to (a) MIMPA recruitment of employees after December 1, 1974 and (b) the terms of any offers of employment made after January 1, 1975;

(3) written documents relating to the discharge of any striking employee after January 25, 1975;

(4) written documents and memoranda referring or relating to (a) any employee joining the strike who subsequently returned to work, (b) the conduct, and (c) any such employee's resignation from the Union; and

(5) written documents and memoranda concerning (a) the cessation of production operations and resignation from MIMPA by Northern,

Continued

² At the time of the hearing the Union had been advised of the Regional Director's decision to proceed on five of the cases and to dismiss the remainder.

³ *United States Gypsum Company*, 161 NLRB 601 (1966).

the information sought therein was not only related to its successorship theory, precluded from litigation by the Hearing Officer, but was also relevant to the accretion issue. We find, in agreement with the Hearing Officer, that, while some of the information sought by the Union relates to the accretion issue, the record developed at the hearing contains sufficient evidence upon which to decide this case. Accordingly, we find that the Hearing Officer's ruling revoking the *subpoenas duces tecum* did not prejudice the Union.

Thus, the Board has reviewed the rulings of the Hearing Officer made at the hearing and finds those rulings free from prejudicial error. The rulings are hereby affirmed.⁹

II. APPROPRIATE UNIT

In determining the appropriate unit for conducting the election, we note, as indicated above, that since 1959 MIMPA and the Union have engaged in collective bargaining on a multiemployer basis and that over the years they have executed successive collective-bargaining agreements covering MIMPA members' employees. Further, common work rules, manual, and grievance procedure are in effect at each of the member companies.

In such circumstances, we find no merit in the Union's contention that only single-company units are appropriate. There is no dispute that the parties have enjoyed an uninterrupted successful history of multiemployer collective bargaining. While the Union is correct in its assertion that upon proper notice it can withdraw from the multiemployer bargaining, the Union herein has failed effectively to withdraw from this multiemployer bargaining relationship. In order to extricate itself from multiemployer bargaining, the Union must notify MIMPA of its withdrawal from bargaining with the Association before the commencement of negotiations for a new agreement.¹⁰ Here, the Union first

(b) the commencement of operations by Peck at facilities previously operated by Northern and (c) the name, address, terms of employment, hourly wages, hours worked and job classifications of any employee working at the facilities formerly operated by Northern after August 1, 1975.

⁹ Following the Hearing Officer's rulings limiting the hearing to the accretion issue, the Union sought special leave to appeal. After arguments before him, the Regional Director for Region 30 granted leave to appeal. Following further arguments on the merits, the Regional Director affirmed the Hearing Officer's rulings, but also granted the Union's request to transfer the case to the Board.

¹⁰ Cf. *Hearst Consolidated Publications, Inc.*, 156 NLRB 210 (1965); *The Evening News Association, Owner and Publisher of "The Detroit News,"* 154 NLRB 1494 (1965).

indicated its desire to discontinue bargaining with MIMPA during the midst of ongoing negotiations and only after the RM petition was filed. Such notice does not satisfy the Board's requirements for effective withdrawal from multiemployer bargaining. Thus, we find that the Union has not effectively withdrawn from bargaining with MIMPA. Therefore, we find that in light of the lengthy and successful bargaining history the appropriate unit consists of all the employees of MIMPA companies.

As noted above, during the course of the January 1975 strike, Northern and United went out of business, and Peck and Moo-Battue, Inc., Peck's wholly owned subsidiary, acquired the facilities of the two defunct companies. Following the change in control, the Union and striking employees continued to picket Peck and Moo-Battue at these facilities. Contrary to the Union's contentions that the employees at these facilities are not properly included in the unit, we find that the most recent collective-bargaining agreement in effect between MIMPA and the Union indicates an intent that these employees be included within the unit. In this regard, the expired contract provides:

30. Change in ownership, management or leasing of any plant shall not serve to invalidate the terms of this agreement. The new owner, new management or new lessee or lessor shall immediately assume all obligations under this agreement.

While Peck has recently undergone a substantial change in employee complement, it is still engaged in the meat packing business at the former Northern and United facilities. Thus we find that, pursuant to the parties' intent as expressed in the applicable contractual provision, Moo-Battue and Peck's expanded operations fall under the scope of the collective-bargaining agreement and that the employees at the newly acquired facilities are properly included within the bargaining unit.

Accordingly, we find that the following employees constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 8(b) of the Act.

All production and maintenance employees, including truckdrivers, employed by members of the Milwaukee Independent Meat Packers Association and excluding office clerical employees, buyers and supervisors as defined by the Act, as amended.

[Direction of Election and *Excelsior* footnote omitted from publication.]