

Al J. Schneider & Associates, Inc., Employer-Petitioner and International Brotherhood of Painters and Allied Trades, Local Union 118, AFL-CIO and Falls Cities Carpenters District Council, United Brotherhood of Carpenters and Joiners of America, AFL-CIO.¹ Case 9-UC-114

January 21, 1977

DECISION AND ORDER DISMISSING
PETITION

BY MEMBERS JENKINS, PENELLO, AND
WALTHER

Upon a unit clarification petition duly filed by Petitioner under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held on July 12, August 30, 31, and September 14, 1976, before Hearing Officer John H. Glenn. On October 5, 1976, the Regional Director for Region 9 issued an order transferring this case to the Board for decision. Thereafter, Petitioner and Falls Cities Carpenters District Council, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (hereinafter the Carpenters), timely 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 reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this case, the Board finds:

1. Petitioner, a Kentucky corporation doing business as a construction contractor, was stipulated by the parties to be engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The Carpenters and the International Brotherhood of Painters and Allied Trades, Local Union 118, AFL-CIO (hereinafter the Painters), were stipulated to be labor organizations and claim to represent certain employees of the Petitioner.

3. Al J. Schneider & Associates, Inc., herein Associates, is a general construction contractor engaged in new construction work. Home Supply Company is a corporate entity engaged in the operation of a retail lumberyard, a building supply dealership, and the ownership, operation, and management of various buildings and real estate. The Al J. Schneider Company is an operating division of Home Supply Company.

Associates' carpenters are represented by Falls Cities Carpenters District Council, United Brother-

hood of Carpenters and Joiners of America, AFL-CIO, herein the Carpenters, and the painters employed by it are represented by International Brotherhood of Painters and Allied Trades, Local Union 118, AFL-CIO, herein the Painters. Associates has been a party to collective-bargaining agreements through industry associations with both the Carpenters and Painters covering its carpenters and painters, respectively.

Home Supply Company's carpenters and painters have been unrepresented. That company has signed no collective-bargaining contract covering such employees and has not authorized any employer association to bargain for it. But the Carpenters and Painters have filed 8(a)(5) charges against Associates, Home Supply Company, and its operating division, Al J. Schneider Company, which appear to be based on the contention that Associates' contracts should be held to cover and apply to the carpenters and painters employed by Home Supply Company and Al J. Schneider Company because all these companies are a single employer and the carpenters and painters employed by all of them are part of the same bargaining units.

Presumably because of these unfair labor practice charges, Associates filed this petition in which it seeks to have the Board find that Associates' bargaining units covered by contracts do not also include carpenters and painters employed by Home Supply Company and its operating division because, contrary to the position taken by the Carpenters and Painters herein, all the companies are not a single employer and, in any event, Associates' carpenters and painters do not have a community of interest with those of Home Supply Company and Al J. Schneider Company.

These are issues which fall outside the scope of a unit clarification proceeding. In *Union Electric Company*, 217 NLRB 666 (1975), the Board defined the role of a unit clarification proceeding as follows:

Unit clarification, as the term itself implies, is appropriate for resolving ambiguities concerning the unit placement of individuals who, for example, come within a newly established classification of disputed unit placement or, within an existing classification which has undergone recent, substantial changes in the duties and responsibilities of the employees in it so as to create a real doubt as to whether the individuals in such classification continue to fall within the category—excluded or included—that they occupied in the past. Clarification is not appropriate, however, for upsetting an agreement of a union and employer or an

¹ The Union's name appears as amended at the hearing.

established practice of such parties concerning the unit placement of various individuals, even if the agreement was entered into by one of the parties for what it claims to be mistaken reasons or the practice has become established by acquiescence and not express consent.

In this case where the issue presented by the parties is whether the painters and carpenters employed by Home Supply Company and Al J. Schneider Company should be declared part of the existing unit of Associates' carpenters and painters covered by contracts with the Carpenters and Painters, respectively, because all the companies involved are a single employer and all the carpenters and painters have

common interests, the petition seeks a declaration by the Board, in advance of a disposition of the 8(a)(5) charges, that the carpenters and painters employed by Home Supply Company and Al J. Schneider Company are not part of the units of employees on whose behalf Associates executed contracts with the Carpenters and Painters. We do not believe that a unit placement issue is thereby presented that is cognizable in a unit clarification proceeding. Accordingly, we shall dismiss the petition.

ORDER

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