Arden Electric, et al. *and* Local 340, International Brotherhood of Electrical Workers, affiliated with International Brotherhood of Electrical Workers, AFL-CIO, Petitioner. Cases 20-RC-15401 through 20-RC-15417

4 June 1985

DECISION ON REVIEW AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS HUNTER AND DENNIS

On 29 December 1981 the Acting Regional Director for Region 20 administratively dismissed the instant petitions, finding they did not raise a question concerning representation in an appropriate unit because the appropriate unit was multiemployer-wide. Petitioner and Employer Collins Electric Co. each filed timely requests for review, arguing that the Sacramento Valley Chapter of the National Electrical Contractors Association (S/NECA) was authorized to bargain only with Petitioner, the multiemployer unit dissolved once S/NECA accepted Petitioner's disclaimer, and therefore the petitions were valid. S/NECA and certain Employers[1] filed responses to the requests for review, asserting that S/NECA had been granted broad authority to bargain on its constituents' behalf and the multiemployer unit survived Petitioner's disclaimer of interest.

On 5 May 1982 the Board, through its Executive Secretary, issued a Ruling on Administrative Action which granted the requests for review, reinstated the petitions, and directed a hearing to resolve the issues raised. S/NECA and certain Employers filed a motion for reconsideration. On 12 August 1982 the Board granted the motion in part, amending its previous ruling by directing a hearing on the continued existence of the multiemployer unit and ordering that, after the hearing, the case be transferred to the Board for further consideration. *Arden Electric*, 263 NLRB 318 (1982).

The case was consolidated for hearing with a related unfair labor practice case,[2] and Administrative Law Judge Jay R. Pollock conducted the hearing. On 28 February 1983 the judge issued an order severing the cases and transferring the instant case to the Board.

S/NECA and Employers Arden Electric, Beard Construction, Branstner Electric, Carlyle Electric, Neuffer Electric, Perri Electric, Peters Electric, and Stage I Electric filed a consolidated brief. Employers Luppen & Hawley, Foss Co., M&M Electric, Gatejen Electric, Stein Electric, and G.J. Yamas Co. also filed a consolidated brief. Employer Collins Electric, Petitioner, and International Brotherhood of Electrical Workers, AFL-CIO (IBEW), which had been permitted to intervene, each filed separate briefs.

Having considered the entire record and the parties' arguments concerning the issues under review, the Board makes the following findings.

I. FACTS

For at least 20 years before 1981, S/NECA and Petitioner engaged in collective bargaining in a multiemployer unit, negotiating three basic types of agreements covering various electrical contracting work.[3] Before 1975 employers granted S/NECA bargaining authority by becoming members in the association or signing a Letter of Assent A. According to the bylaws then in effect, a member's authority to negotiate labor agreements was "expressly and exclusively" granted to S/NECA. Assent A was, however, more narrow, authorizing S/NECA as the "collective bargaining representative for all matters contained in or pertaining to the current approved . . . labor agreement between [S/NECA] and Local Union [340], IBEW" until timely notice of termination.

S/NECA and its national office, National Electrical Contractors Association (NECA), perceived certain problems with the agreement. First, they feared that Assent A's grant of bargaining authority expired with the pertinent IBEW labor agreement and thus freed the signers to bargain individually during a strike.[4] Second, they were concerned that the bylaws' delegation of bargaining authority required S/NECA to negotiate contracts with unions representing other trades if a member wished or, conversely, prevented employers from entering into such contracts without the benefit of S/NECA representation.

At a 6 November 1975 meeting S/NECA's board of directors considered a revised letter of assent proposed by NECA and decided to adopt it, except for certain damage clauses. The new assent, entitled "Letter of Assent Multi-Employer Agreement," in pertinent part provided as follows:

> 1. The undersigned hereby designates the Sacramento Valley Chapter, NECA, as its bargaining agent, and further agrees to be bound by all collective bargaining and/or other

[1] Beard Construction Co., Carlyle Electric Co., and Stage I Electric Co.

[2] *Grason Electric Co.*, 20-CA-16872. This case is now pending before the Board.

[3] These contracts were the Inside Wireman's Agreement, the Material Handler's Agreement, and the Line Agreement.

[4] At its 1974 convention, IBEW adopted a resolution that in effect permitted its local unions to strike rather than submit disputes to the Council on Industrial Relations.

agreements in effect as of this date and all future collective bargaining and/or other agreements executed by the Sacramento Valley Chapter on its behalf, with the International Brotherhood of Electrical Workers and its local unions and other unions as determined necessary and authorized by the Chapter Board of Directors covering work that is associated with "electrical contracting."

2. The Chapter shall constitute a multi-employer bargaining unit and no unit member shall negotiate or execute a collective bargaining agreement covering unit work, (i.e., work that is associated with electrical contracting) other than through the Chapter or as authorized by the Chapter.[5]

In a letter dated 16 December 1975, S/NECA's executive manager, Ken Carlson, informed the membership of the decision to employ the multiemployer assent. This letter, which was the only document ever sent to employers to explain the new assent, provided as follows:

> Our present By-Laws, which you are a signatory to, state that the authority to negotiate agreements with labor organizations encompassing wages, hours, working and other conditions affecting employees is expressly and exclusively delegated to the Chapter. Also, that no member shall independently enter into any such agreement with a labor organization.
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> It is the feeling of the Board of Directors that the above type language is too broad and covers more than just IBEW. Many of our members have more than one craft to deal with and it was never the intent that the Chapter negotiate with the laborers, carpenters, operating engineers, etc.
>
> For this reason, the Chapter has had prepared a "Multi Employer Bargaining Agreement" to be signed by each member that would limit the Chapter's authority to bargain to the IBEW and other unions as determined necessary by the Board of Directors.
>
> After our members have signed the enclosed letter it is the Board's intent to delete all reference of bargaining rights from the By-Laws.[6]

True to the plan outlined in the letter, S/NECA's board of directors met on 4 May 1978 and adopted the following resolution:

> WHEREAS: The Board of Directors of this Chapter having reviewed the New Proposed Restated By laws [sic] and specifically Article [16], which formally established an I.B.E.W. Employers Section that has been in Quasi Existence for the past several years and,
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> WHEREAS: Article [4], Section 11 of the Restated By-Laws states that Employers who elect to hire I.B.E.W. Electrical Workers shall delegate the authority to negotiate agreements to the Chapter through a separate Employer Bargaining Assent approved for that purpose by the Board of Directors, now therefore be it,
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> RESOLVED: That upon approval by the Membership of the Restated By-Laws that this Board of Directors approve the revised Multi-Employer Bargaining Assent Agreement to be signed by all NECA Members who are or elect to be I.B.E.W. Employers, and be it further,
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> RESOLVED: That this same Multi-Employer Bargaining Assent Agreement be available to all I.B.E.W. Employers who are not members of this Association and who desire the Association to bargain in their behalf.

These bylaws were in effect in 1978.[7]

Article 4, section 11 of the revised bylaws required members "who elect to hire I.B.E.W. Electrical Workers" to delegate bargaining authority "expressly and exclusively" to S/NECA through the multiemployer assent. Article 16 established an "I.B.E.W. Employers" section made up of multiemployer assent signers and stated that the section's purpose was, among other things, to negotiate labor agreements.[8] That article also provided that employers would be bound to the terms of the relevant agreement by signing an Assent A. It appears that each petitioned-for employer signed one or both of the assents S/NECA used.[9]

[5] There is some conflict about whether par. 2 of the multiemployer assent included the parenthetical definition of unit work recited above. In light of all the record evidence bearing on the meaning of the document, we find it unnecessary to resolve the conflict.

[6] It is not clear why Carlson did not inform the members of the fact that the multiemployer assent was also designed to avoid the possibility of an employer's lawfully abandoning the unit during a strike.

[7] The bylaws were modified in 1979, but not materially. S/NECA's bylaws use Roman numerals to designate the article and Arabic numerals to designate the section. For clarity, we will use Arabic numerals to designate both.

[8] Art. 8, sec. 1, provided that "[w]hen the President [of S/NECA] is an I.B.E.W. employer he shall also be chairman of the I.B.E.W. employers section." Art. 16 directed the chairman to "sign labor agreements for the I.B.E.W. employers section" on instructions from S/NECA's board.

[9] The record is ambiguous on this point concerning Slater Electric Co. In light of our ultimate disposition, we find it unnecessary to resolve this ambiguity.

Bargaining for the new contracts in 1981 was unsuccessful, and in June 1981 the employees went on strike. As the parties' relationship deteriorated, S/NECA heard rumors that Petitioner planned to disclaim or decertify the unit. Through its attorney, S/NECA contacted at least three unions about the possibility of entering into an agreement if Petitioner and S/NECA terminated their relationship.[10] On 14 September 1981 Petitioner's membership voted to disclaim interest in the multiemployer unit, and on the following day Petitioner's president, Lee Frith, delivered a letter to S/NECA stating that Petitioner disclaimed interest in representing the employees in the multiemployer bargaining unit.

Ken Carlson received the disclaimer 15 September 1981 and the next morning called Mark Hughes, NECA's director of labor relations, to ask whether IBEW permitted such disclaimers. Hughes contacted an IBEW official and immediately called Carlson to inform him that Petitioner did not have authority to disclaim. Sam Myers, a member of the board of directors, testified that the board met later that day to consider the appropriate course of action. Steven Moore, also a board member, testified that the board, although aware it could refuse the disclaimer, decided to accept it. Carlson, under directions from the S/NECA board, sent Petitioner a telegram dated 16 September 1981 thanking it for the disclaimer, stating that S/NECA had begun negotiations with another union, and requesting Petitioner not to contact any employers in the unit for individual negotiations.[11]

Soon thereafter, S/NECA began discussions with the Steelworkers and the National Association of Independent Unions (NAIU) about negotiating a contract. S/NECA also had several meetings with representatives of Petitioner and IBEW in an unsuccessful effort to resolve the differences. On 25 September 1981, during the midst of these discussions, Petitioner filed the instant petitions. S/NECA's attorney learned about the petitions 26 September 1981. On 1 October 1981, however, S/NECA signed a contract with NAIU purporting to bind all employers which had signed either an Assent A or a multiemployer assent. S/NECA first notified employers of the contract 2 October 1981 at a general membership meeting.

II. ANALYSIS AND CONCLUSIONS

The question before us is whether the petitions should be dismissed because they seek single employer units which are inappropriate because of the employer's participation in a multiemployer unit. For the reasons stated below, we find that the employers were not part of the multiemployer unit when the petitions were filed, and therefore the petitions should be processed.

It is axiomatic that the basis for multiemployer bargaining units is the parties' consent to be bound by group bargaining. Thus, "[t]he Board does not find a multiemployer unit appropriate except where all parties clearly agree to such a unit or where there has been a history of bargaining on a multiemployer basis and the employers and either the incumbent or a rival union desire to continue bargaining on such a basis. In the absence of either of these two factors, the Board will not find appropriate a unit covering employees of more than one employer, regardless of the desirability of such a unit." *Evening News Assn.*, 154 NLRB 1494, 1496 (1965) (footnotes omitted). The documents S/NECA relies on do not establish that the association employers consented to bargaining with a substitute for Petitioner.[12]

Assent A cannot be construed as a grant of authority to S/NECA to bargain with any union other than an IBEW local. It contains no reference to bargaining with any other unions and states that S/NECA is authorized as the "collective bargaining representative for all matters contained in or pertaining to the current approved . . . labor agreement between [S/NECA] and Local Union [340], IBEW." In fact, S/NECA's executive manager, Ken Carlson, testified that employers who signed only an Assent A would not have authorized bargaining with any union other than an IBEW local.

Similarly, the multiemployer assent does not authorize bargaining with a substitute for IBEW for electrical contracting work. This is evidenced by the 16 December 1975 letter explaining the multiemployer assent, S/NECA's 4 May 1978 resolution adopting that assent, and S/NECA's bylaws.

S/NECA's 16 December 1975 letter reveals that S/NECA itself did not perceive the assent to be a liberal bargaining license. As the letter explained, S/NECA's then current bylaws were "too broad and cover[ed] *more than just IBEW*" (emphasis added). Although "it was never the intent that [S/NECA] negotiate with the laborers, carpenters, operating engineers, etc.," the bylaws' overbreadth

[10] S/NECA apparently contemplated entering into an agreement governed by Sec. 8(f) of the Act.

[11] S/NECA had not in fact begun such negotiations.

[12] S/NECA's membership discussed the possibility of bargaining with NAIU or another union at a general membership meeting on 24 September 1981. At the end of the meeting, many employers in attendance apparently applauded the S/NECA board's decision to find a substitute for Petitioner. There is no evidence establishing the identities of the "applauding" employers. Such informal action cannot supply the consent necessary to establish a new multiemployer unit.

inadvertently *required* S/NECA to deal with the members' other nonelectrical craft unions. It was "[f]or this reason," the letter declared, that S/NECA decided to adopt the multiemployer assent to "limit [S/NECA's] authority to bargain to the IBEW and other unions as determined necessary by the Board of Directors." Reading this explanation with the multiemployer assent, which tracks the language in the letter, we find that the assent authorized S/NECA to bargain with IBEW locals such as Petitioner concerning electrical work, and granted S/NECA the discretion to engage in unitwide bargaining with unions representing other trades if the board determined such bargaining appropriate.

S/NECA's 4 May 1978 resolution adopting the multiemployer assent lends further support to our determination. The resolution refers to the "I.B.E.W. Employers Section" which had been "in Quasi Existence for the past several years" and identifies the employer-parties to the bargaining relationship as "I.B.E.W Employers," employers "who elect to hire I.B.E.W. Electrical Workers," or employers "who are or elect to be I.B.E.W. Employers." More importantly, the resolution expressly defines the bargaining relationship by reference to bargaining with IBEW. Thus, it states, "Employers who elect to hire I.B.E.W. Electrical Workers shall delegate the authority to negotiate agreements to [S/NECA] through a separate Employer Bargaining Assent [the multiemployer assent] approved for that purpose by the Board of Directors . . . ."

Finally, S/NECA's bylaws also repeatedly define the bargaining relationship by reference to IBEW and thus reaffirm our interpretation. Article 4, section 11 requires members "who elect to hire I.B.E.W Electrical Workers" to delegate their bargaining authority by signing the multiemployer assent. Article 16, which creates S/NECA's negotiating committee, is entitled "I.B.E.W Employers" and, more significantly, states that employers will be bound to the terms of the relevant agreement by signing an Assent A, the assent discussed above that only authorizes bargaining with an IBEW local.

In sum, we find that employer unit members and S/NECA intended to limit S/NECA's authority to bargain only with an IBEW local such as Petitioner concerning electrical contracting work and with unions representing other trades. Therefore, having accepted Petitioner's disclaimer, S/NECA essentially agreed to the dissolution of the multiemployer-IBEW unit and could not bind employers to a non-IBEW unit without new bargaining authorizations.[13] Having determined that the employers had not consented to a bargaining relationship with a substitute for IBEW, we find that the former unit was dissolved by the parties' consent to the disclaimer and the petitions for employees of single employers are therefore not barred. We shall remand these cases to the Regional Director for further appropriate action.

ORDER

The petitions in Cases 20–RC–15401 through 20–RC–15417 are remanded to the Regional Director for further appropriate action.

MEMBER HUNTER, dissenting.

For the reasons given in my dissent from the Order directing a hearing herein,[1] I would not process the instant petitions. I therefore dissent from the majority's decision to remand the petitions to the Regional Director.

[13] At this point in the proceedings, we cannot consider, as S/NECA would have us do, whether Petitioner's disclaimer constituted unlawful whipsawing Any whipsaw effect results from the structure of the parties' relationship and from S/NECA's decision to substitute a new union for IBEW before the unit's individual constitutents authorized such a change If we were to rely on the alleged whipsawing to dismiss the petitions, without returning the parties to the status quo ante, we would in effect render moot any inquiry into the employers' consent to bargaining with a substitute for IBEW and obligate the employers to bargaining they had never authorized Neither precedent nor policy warrants such a result

[1] *Arden Electric*, 263 NLRB 318 (1982)