

Ameron, Inc., Steel & Wire Div., & TAMCO, Petitioners and District 39, Subdistrict 2, United Steelworkers of America. Case 31-UC-213

April 29, 1988

DECISION ON REVIEW AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
JOHANSEN AND CRACRAFT

On August 20, 1986, the Acting Regional Director for Region 31 issued a Decision and Order in which he dismissed the instant unit clarification petition, which sought to separate the existing single unit of employees of Ameron, Inc., Steel & Wire Div. (Ameron), and TAMCO,¹ represented by the Union at Etiwanda, California, into two separate units. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, the Petitioners filed a timely request for review of the Acting Regional Director's decision on the grounds, inter alia, that the Acting Regional Director erred in his application of the principles set forth in *Rock-Tenn Co.*, 274 NLRB 772 (1985), by failing to clarify the unit.

By unpublished order dated March 30, 1987, the Board granted the Petitioners' request for review. Thereafter, the Petitioners filed a brief on review.²

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

We have considered the entire record in this case and make the following findings.

Ameron was established in 1957 as Etiwanda Steel Producers, Inc. In 1970, its name was changed to Ameron Steel Producing Division of Ameron, Inc. and, thereafter, to Ameron Steel & Wire Division, its present name. At that time, Ameron operated a melt shop, wire mill, and rolling mill at its Etiwanda location. In 1972, the Union was certified as the exclusive representative of all production and maintenance employees of Ameron at Etiwanda.

In 1974, Ameron contracted with two Japanese companies, Tokyo Steel and Wire and Mitsui Steel, to build a new melt shop on the premises which would operate under the name TAMCO. Construction began in 1974, and the melt shop became operational in 1977. At that time, TAMCO had no employees. All labor and management services for the melt shop were supplied by Ameron through a contractual arrangement, and a vice president and general manager of Ameron ran the entire operation.

TAMCO, however, is a separate corporation, with Ameron owning 50 percent, and Tokyo Steel and Mitsui Steel each owning 25 percent. TAMCO's board of directors consists of eight members—two each representing Tokyo Steel and Mitsui Steel, and four representing Ameron. The chairmanship of the board rotates yearly, directors' terms are 3 years in length, and the board meets twice annually. At the time of the hearing, Ameron's president and chief executive officer was the chairman of the board and chief executive officer of TAMCO.

The TAMCO melt shop produces steel bars (billets). Originally, a portion of its production went to Ameron's rolling mill, and a portion was purchased by the two Japanese partners for resale to outside markets. Ameron's rolling mill turned the billets into rods, which were used by Ameron's wire mill for various types of industrial and commercial wire products and for rebar, which was sold to outside markets.

In 1978, during negotiations which resulted in the 1977-1981 collective-bargaining agreement, Ameron suggested that there should be separate contracts, as the melt shop now was operating as a new company—TAMCO. The Union rejected the suggestion, and Ameron acquiesced. The issue was not raised again in the negotiations which resulted in the 1981-1983 collective-bargaining agreement.

In 1983, in response to the nationwide crisis in the steel industry, Ameron found it necessary to restructure and recapitalize. In exchange for a sizeable new capital investment from Tokyo Steel and Mitsui Steel, Ameron turned the rolling mill over to TAMCO and the plant was modernized. The recapitalization agreement included a negotiated settlement with the Union midterm in the contract. During those negotiations, Ameron was able to obtain several wage and fringe benefit concessions from the Union in exchange for a profit-sharing plan. However, the Union continued to oppose separate contracts for the Ameron and TAMCO operations.

During the 1986 negotiations, the two Companies made it clear to the Union that they were separate Companies, that there was no relationship between them, and that they had no commonality of interest. The Union again resisted separate contracts and threatened to walk out of negotiations. Negotiations resumed after the parties agreed in writing that the Companies might submit the issue of "separability of contract" to the Board, and abide by the Board's decision, after appeal, if any.

As part of the 1983 restructuring, employees and management were split between the Companies. TAMCO established its own payroll (approximate-

¹ Hereinafter referred to as the Petitioners

² By letter dated April 10, 1987, the Union advised the Board that it would rely on its posthearing brief to the Regional Director.

ly 230 bargaining unit employees), and the first TAMCO checks were issued to rolling mill and melt shop employees around June 1983. New TAMCO officers were named, none of whom were Ameron officers. TAMCO's own managers have day-to-day responsibilities for the rolling mill and melt shop. TAMCO maintains separate business, financial, and personnel records, and files separate tax returns. Pension benefits were frozen and continuation of service was picked up from the time TAMCO began its own payroll. The pension plan is identical to Ameron's, but it is administered separately by TAMCO. In late 1985, the records for all of Ameron's salaried employees were moved to the wire mill and fringe benefits for that group were brought under Ameron's corporate benefit program. Records for Ameron's approximately 50-60 bargaining unit employees were moved during the latest contract negotiations, and Ameron established its own personnel department.

The three plants, i.e., TAMCO's rolling mill, TAMCO's melt shop, and Ameron's wire mill, are located on the same property.³ TAMCO has a multiyear lease with Ameron and pays a monthly rental of \$10,000, plus an additional percentage charge based on its sales. Gas, water, and utility bills are treated as a single account with submeters. Ameron bills TAMCO for gas and electric services; TAMCO bills Ameron for water. In addition, Ameron pays TAMCO for use of the state-certified scale, a water-spraying truck, some janitorial service, and equipment maintenance provided by TAMCO employees. TAMCO shares its first aid station with Ameron, generally charging \$15 per employee, per visit.

Each Company owns its own tractors and trailers and employs its own drivers. In 1984, the drivers' seniority list was divided, two separate units were formed, and two separate collective-bargaining agreements were negotiated with the drivers' collective-bargaining representative. Ameron pays TAMCO \$500 per month for the use of its locomotive, which tows railcars onto Ameron's spur from the commercial rail lines; TAMCO rents Ameron's forklift while negotiating for its outright purchase.

The Companies no longer have overlapping customers, and both Companies sell to and buy from outside sources. Further, TAMCO no longer makes rods and, since 1984, Ameron has purchased its rods from other suppliers. Ameron employs sales agents for specific territories and has an agency agreement with TAMCO for its salespeople to rep-

resent Ameron in specific rebar areas. Also, although the two Companies usually do not compete, wire occasionally competes with rebar sales. From time to time, Ameron purchases certain "supply items" from TAMCO.

Ameron's labor relations director, George Fischer, has been Ameron's principal negotiator for several successive contracts. He also gives advice on contract interpretation questions and handles arbitrations. In 1983, Fischer was told that he and his staff were no longer responsible for TAMCO's labor relations. From 1983 until March 1986, Joe Lyons represented both Companies in union negotiations as well as in the grievance-arbitration process. In March 1986, Fischer assumed responsibility for labor relations in Ameron's wire mill only. From 1983 to 1986, there were 14 grievances in the wire mill and, at the time of the hearing, Fischer was scheduled to handle the 4 grievances that were set for arbitration. Also during that period, there were two TAMCO arbitrations, with Fischer handling one and an outside counsel handling the other.

The Ameron wire mill contains unique equipment. Dissimilar skills requiring training are needed to operate the different equipment in all three plants, and the skills required are not interchangeable. There has been a total of five transfers between the Companies within the last 3 years, involving maintenance employees and wire department employees who transferred to the shipping department. Although past collective-bargaining agreements have indicated there would be a "common labor pool," there has not been one for at least the past 5 years. In addition, each Company has its own employment application, the working hours differ in each plant, and there have been no joint social activities in the past 3 years; however, there is a Joint Safety Committee with representatives from both Companies.

The Acting Regional Director dismissed the petition as he concluded that there were no compelling circumstances to warrant clarifying the historical single unit into two separate units. He distinguished *Rock-Tenn* on the grounds that, in the instant case, there is common ownership and considerable overlap in the handling of labor relations and grievances. Further, he found it significant that although TAMCO has been a separate employer since 1983, the Petitioners acceded to a single-unit contract at that time, and again in 1986, while in *Rock-Tenn*, the successor employer sought to clarify the unit at its first opportunity after purchasing the two plants.

We disagree. The history of bargaining in the single-unit covering rolling mill, melt shop, and

³ The Arrow Pipe Plant of the Southern California Division of Ameron's Concrete Pipe Group also is located on this property and shares in the billing arrangements described herein. The company is managed separately, and its employees are represented by another union.

wire mill employees began in 1972, when all these operations were part of Ameron. Further, although TAMCO was created in 1974, the Company was not operational until 1977. However, from 1977 to 1983, TAMCO had no payroll or employees of its own; rather, it contracted with Ameron for all of its labor and management services. Thus, although we find nothing in the record to indicate that there were any changes in labor relations and/or general terms and conditions of employment during this period (other than corporate ownership), the evidence clearly shows that since the 1983 restructuring and recapitalization, TAMCO has been operating as a separate entity. TAMCO has its own managers and its own employees, its operations require different equipment and different skills from those of Ameron's wire mill, and transfers between Companies have been infrequent. Moreover, none that occurred appear to have involved any skilled production employees, whose skills, as we have noted, are not interchangeable.

Since the effective date of the most recent collective-bargaining agreement, Ameron has established its own personnel department, and the Companies have taken steps to separate completely the handling of labor relations. Contrary to the Acting Regional Director, we do not believe much weight should be given to the fact that the Petitioners continued to negotiate contracts covering the single unit. The intent of the Companies to become totally separate is clear. They have been moving steadily toward that goal, despite the Union's adamant refusal to consider separate contracts until the parties agreed between themselves to submit the issue to the Board.

Further, the Acting Regional Director improperly concluded that there was common ownership of the Companies. That Ameron is a 50-percent

owner of TAMCO and is represented proportionately on TAMCO's board of directors does not negate the fact that TAMCO is a separate entity with arm's-length relationships in all financial and operational aspects. Unlike those cases where the long history of single-unit bargaining has involved two or more subsidiaries of a parent company, Ameron and TAMCO are essentially unrelated entities, functioning separately and autonomously. Compare *Batesville Casket Co.*, 283 NLRB 795 (1987).⁴

As we find there have been recent, significant changes in the Petitioners' operations which render the combined single unit inappropriate, the unit clarification petition is reinstated. Accordingly, we shall clarify the unit as requested by the Petitioners.

ORDER

It is ordered that the Certification of Representative issued by the Board in October 1972 for a unit comprising production and maintenance employees at Ameron, Inc., Steel & Wire Div., located at Etiwanda, California, and currently represented by District 39, Subdistrict 2, United Steelworkers of America, be clarified so as to constitute two separate units, one each at Ameron and TAMCO.

⁴ In *Batesville Casket*, two subsidiaries of a common parent had bargained in a single combined unit for over 50 years, and at no prior time had any party sought to modify or change the unit. Moreover, the only significant operational changes involving the existing unit occurred nearly 30 years before the unit clarification petition was filed, and the creation of separate personnel or human resources departments occurred more than 10 years before the petition was filed. The Board denied the request to clarify the unit, finding that there had been no "recent, substantial changes in their operations . . . which would warrant disregarding the long-existing bargaining history of the two-plant unit." Id. at 797.