

Centra, Inc., d/b/a Central Transport, Inc., and Central Cartage Company and Truck Drivers Union Local 407, affiliated with the International Brotherhood of Teamsters, AFL-CIO, Petitioner. Case 8-RC-15004

May 12, 1999

DECISION ON REVIEW AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX
AND HURTGEN

On June 19, 1996, the Regional Director for Region 8 issued a Decision and Direction of Election in which he found appropriate the petitioned-for single employer bargaining unit of the Employer's dock and yard employees at the Employer's facility in Cleveland, Ohio. The Employer filed a timely request for review, contending, inter alia, that the petitioned-for unit is inappropriate because the record evidence establishes a controlling history of multiemployer bargaining. On July 24, 1996, the Board granted the Employer's request for review.

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

Having carefully evaluated the record, including the Employer's brief on review, the Board concludes that the Employer has established a controlling history of bargaining on a multiemployer basis, and has accordingly rebutted the presumption in favor of single employer bargaining units. We shall therefore dismiss the petition.

I. FACTURAL BACKGROUND

A. *Collective-Bargaining History*

The Employer is engaged in the breakdown, consolidation, and delivery of freight, and has terminals in Cleveland, Ohio, and throughout the United States. The petitioned-for unit of dock and yard employees (hereafter dockworkers) performs the breakdown of shipments received at the Employer's Cleveland terminal, and consolidates the shipments for local delivery.

The collective-bargaining history for the petitioned-for unit commences in 1982, when the Employer obtained an automotive consolidation contract to be performed at the Cleveland terminal. The Employer hired personnel from D & S Leasing to perform this work. D & S Leasing then entered into a contract recognizing Teamsters Local 507 as the representative, on a single employer basis, of the unit of dockworkers at the Cleveland terminal. The contract was a so-called "white paper" agreement, with terms differing from those set forth in the Teamsters National Master Freight Agreement (NMFA). The NMFA is a nationwide collective-bargaining agreement negotiated between the Teamsters National Freight Industry Negotiating Committee (TNFINC) on behalf of various Teamsters local unions, and the Motor Carriers Labor Advisory Council (MCLAC) on behalf of various employers in the freight industry.

On October 6, 1982, Teamsters Local 964 replaced Local 507 as the bargaining representative for the unit of dockworkers. D & S Leasing and Local 964 thereafter executed a collective-bargaining agreement, effective from 1982 to 1985, covering the unit of dockworkers on a single employer basis and incorporating the same terms as the above-referenced white paper agreement. D & S Leasing and Local 964 executed a successor single employer contract effective June 1, 1985, to March 31, 1988.

On May 31, 1986, the Employer canceled its contract with D & S Leasing to perform the automotive consolidation work at the Cleveland terminal. D & S Leasing in turn laid off the entire unit of dockworkers. The Employer thereafter utilized its own employees to perform the unit work, including the rehire of a limited number of unit employees who been employed by D & S Leasing. On the filing of unfair labor practice charges, the General Counsel issued a complaint alleging, and the Board found, inter alia, that D & S Leasing and the Employer were joint employers, that the layoffs were unlawfully motivated by antiunion animus, and that the Employer had unlawfully refused to recognize and bargain with Local 964 over the decision to cancel the contract with D & S Leasing. The Board ordered, inter alia, reinstatement of the affected employees, and that the Employer bargain with Local 964 as the representative of the unit of dockworkers. *D & S Leasing*, 299 NLRB 658 (1990). The Sixth Circuit enforced the Board's Order. *NLRB v. Centra, Inc.*, 954 F.2d 366 (6th Cir. 1992), cert. denied 513 U.S. 983 (1994).

In October 1992, the Employer and Local 964 entered into a collective-bargaining agreement covering the unit of dockworkers by signing onto the NMFA, the multi-employer/multilocal contract covering Teamsters employed in the freight industry. That NMFA contract was effective from April 1991 to March 1994. Both Local 964 and the Employer were signatory to the successor NMFA contract effective from April 1, 1994, to March 31, 1998.

B. *Jurisdiction Over the Dockworkers Unit is Awarded to the Petitioner Local 407*

In 1992, the Petitioner Local 407 initiated internal Teamsters jurisdictional procedures seeking to be awarded jurisdiction over the dockworkers unit. The claim of jurisdiction is apparently based on the assumption by Local 407 of some representational responsibilities on behalf of unit employees after the Employer unlawfully refused to bargain with Local 964. On May 12, 1993, the International Brotherhood of Teamsters (IBT) Executive Board awarded jurisdiction over the unit to Local 407.

In June and August 1993, Local 407 notified the Employer of the jurisdictional award, and requested that the Employer recognize and bargain with Local 407 as the

representative of the unit. The Employer has refused to do so. The NMFA contract requires that all signatory employers and unions comply with IBT internal jurisdictional determinations.¹

In January 1994, Local 407, recognizing that the unit employees would be unrepresented because of the Employer's refusal to recognize Local 407, requested that the IBT executive board stay the jurisdictional award so that Local 964 could temporarily represent the unit employees. The request for a stay was granted on February 1, 1994. On January 28, 1994, the Petitioner filed the instant petition to represent the unit of dockworkers employed at the Employer's Cleveland terminal.

On June 30, 1995, the IBT executive board granted the request of Local 407 to lift the stay of the jurisdictional award. On September 18, 1995, Local 964 informed the Employer by letter that it recognized the Teamsters jurisdictional award to Local 407, and that it disclaimed all rights to represent the unit employees. In that letter, Local 964 requested that the employer recognize the transfer of the unit to Local 407, and stated that it would "retain and service" those members until the transfer was complete. On March 8, 1996, Local 964 filed with the Board a disclaimer of interest for the unit employees.²

II. ANALYSIS

"A single employer unit is presumptively appropriate and a party urging a multiemployer unit must demonstrate a controlling history of bargaining on a multiemployer basis and an unequivocal intent by the employer to participate in and be bound by the results of group bargaining." *Sands Point Nursing Home*, 319 NLRB 390 (1995). We find, contrary to the Regional Director, that the Employer here has rebutted the presumption in favor of the petitioned-for single employer unit by demonstrating significant history of bargaining on a multiemployer basis. The Regional Director correctly observed that bargaining occurred on a single employer basis from the unit's inception in 1982, was scheduled to continue until 1988 on that single employer basis by virtue of contract extension, and that single employer bargaining ceased when the Employer unlawfully abrogated the collective-bargaining agreement in 1986. The Regional Director

¹ Art. 30 of the NMFA provides:

In the event that any dispute should arise between any Local Unions, parties to this Agreement or Supplements thereto, or between any Local Union, Party to this Agreement or Supplements thereto and any other Union, relating to jurisdiction over employees or operations covered by such agreements, the Employer and the Local Unions agree to accept and comply with the decision or settlement of the Unions or Union bodies which have the authority to determine such dispute, and such disputes shall not be submitted to arbitration under this Agreement or Supplements thereto or legal or administrative agency proceedings. . . .

² The disclaimer provided, in part, that "[i]t is understood that this disclaimer of interest for the employees in the above unit is without prejudice."

further recognized that subsequent to the Employer's unlawful conduct, however, bargaining has been exclusively on a multiemployer basis pursuant to the NMFA. The Regional Director thus found that "the history of collective-bargaining in this case was on a single employer basis from 1982 to 1986 and on a multiemployer basis from 1986 until the present."³ Based on these facts, the Regional Director concluded that the record did not establish a controlling history of collective-bargaining on a multiemployer basis, and hence that the presumption in favor of a single employer unit had not been rebutted.

The Employer principally argues on review that the Regional Director erred by assigning controlling weight to the single employer bargaining history that occurred from 1982 to 1986. The Employer contends that the subsequent history of multiemployer bargaining pursuant to the NMFA should be controlling, and is sufficient to rebut the presumption in favor of the petitioned-for single employer unit.

Unit determinations are by their nature highly fact specific, and determination of a unit's appropriateness will invariably involve factual situations—as here—peculiar to the employer and unit at issue. *Maramount Corp.*, 310 NLRB 508, 511 fn. 12 (1993). This case presents the unusual factual situation in which there is a history of collective-bargaining in the petitioned-for unit on both a single employer and multiemployer basis. In deciding whether to assign controlling weight to the former or the latter history, we are faced with the task of balancing stability in collective-bargaining relationships against the interest in assuring employees' freedom of choice. See, e.g., *Albertson's, Inc.*, 307 NLRB 338 (1992); *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962). We find that the balance here should be struck in favor of stability in labor relations.

The Petitioner does not dispute the Regional Director's finding that the dockworkers unit has been represented in a multiemployer context since 1986, culminating with the Employer and Local 964 signing onto the multiemployer/multilocal NMFA contract in 1992, and to the successor NMFA contract effective from April 1, 1994 to March 31, 1998. The record evidence accordingly establishes that the unit employees have had a distinct identity in the multiemployer unit for a significant period of time. This is accordingly not a case in which the history of multiemployer bargaining has been for a brief duration, and thus is insufficient to rebut the presumption in favor of single employer units. *West Lawrence Care Center*, 305 NLRB 212, 217 (1991) (brief duration is less than a

³ No party challenges this finding. The record indicates that the unit employees were covered by the terms of the NMFA commencing in 1986 following the Employer's unlawful conduct. See *D & S Leasing*, 299 NLRB at 659.

year).⁴ “The longer the history of bargaining in a broader unit, the greater the weight of that history in the balance.” *West Lawrence Care Center*, supra at 217.

The Board has nevertheless found a lengthy history of multiemployer bargaining not to be determinative of unit appropriateness when the benefits and stability to be achieved through multiemployer bargaining have not inured to the benefit of employees. *Burns International Security Service*, 257 NLRB 387, 388 (1981); *Maramount Corp.*, supra, 310 NLRB at 511. There is no contention that such circumstance is applicable here, however, and we discern no evidence in the record upon which to draw that conclusion. We accordingly have no basis for discounting the significant history of multiemployer bargaining with respect to the petitioned-for unit under the aegis of the NMFA. “The Board has long been mindful of the beneficial stability and uniformity of labor conditions to be achieved through associationwide bargaining co-extensive with employee units of various employers in the same industry.” *Burns International Security Service*, supra at 388.

The Board will thus not disturb an established bargaining relationship unless required to do so by the dictates of the Act or other compelling circumstance. *Great Atlantic & Pacific Tea Co.*, 153 NLRB 1549, 1550 (1965). We have carefully considered whether the single employer collective-bargaining history that attached from 1982 to 1986 is a compelling circumstance warranting disruption of the established multiemployer bargaining relationship. We recognize that single employer bargaining was only extinguished by the Employer’s unlawful conduct in 1986, and that the multiemployer bargaining came about in the wake of that unlawful conduct. As we have observed, however, that multiemployer bargaining has continued thereafter and has resulted in a stable and beneficial bargaining relationship. We further recognize that the multiemployer collective-bargaining agreements reached by the Employer and Local 964 under the NMFA were in compliance with the bargaining order issued by the Board and enforced by the Sixth Circuit. In these circumstances, we do not believe that the Employer’s prior unlawful conduct—which has been rectified in the unfair labor practice proceedings—compels the Board to disturb the current established multiemployer bargaining relationship in favor of the earlier single employer relationship. We accordingly shall dismiss the instant petition.⁵

⁴ See *U.S. Pillow Corp.*, 137 NLRB 584, 587 fn. 12 (1962) (collecting cases holding that either “less than a year” or “about a year” of multiemployer bargaining may be considered “brief duration”).

⁵ In light of our decision to dismiss the petition based upon the history of multiemployer bargaining, it is unnecessary to pass on the Employer’s argument that the Regional Director erroneously denied the Employer’s motion to reopen the record to adduce additional evidence regarding the multiemployer bargaining history.

Our dissenting colleague asserts that the multiemployer unit began in 1992. However, the Petitioner does not dispute the Regional Director’s finding that the multiemployer unit began in 1986. Thus, at the time of the petition herein (January 28, 1994), the multiemployer unit had been in existence for 8 years, not 16 months.⁶

The dissent also relies on the fact that the single-employer recognition was *unlawfully* ended in 1986. However, the critical fact is that *a multiemployer unit was lawfully created* in 1986, and has existed at all times since.

ORDER

It is ordered that the petition in Case 8–RC–15004 is dismissed.

MEMBER FOX, dissenting.

It is well settled that a single employer unit is presumptively appropriate and that a party urging a multiemployer unit bears the burden of rebutting that presumption by demonstrating a controlling history of bargaining on a multiemployer basis. *Sands Point Nursing Home*, 319 NLRB 390 (1995); *Cab Operating Corp.*, 153 NLRB 878, 879–880 (1965). Contrary to my colleagues, I would find that the Employer here has failed to rebut the presumption in favor of the petitioned-for single employer unit.

The record shows that bargaining covering the instant unit of dockworkers commenced on a single employer basis from the unit’s inception in 1982. That initial collective-bargaining agreement between the Employer and Teamsters Local 964 was effective from 1982 to June 30, 1985, and a successor single employer contract was thereafter executed effective June 1, 1985, to March 31, 1988. The record thus establishes that the single employer bargaining unit was contractually recognized for a 6-year period. There is no dispute that this established single employer bargaining relationship was only extinguished because of the unfair labor practices committed by the Employer in 1986.⁷

Following the disruption of the single employer bargaining relationship due to the unlawful conduct, in October 1992 the Employer and Teamsters Local 964 entered into a collective-bargaining agreement covering the unit of dockworkers by signing onto the multiemployer-/multilocal contract covering Teamsters employed in the

Although Local 964 asserts that it has disclaimed representation rights in the multiemployer unit, in these circumstances we will not treat the disclaimer as a rupture of the multiemployer relationship. See *Estate of Bella Moses*, 247 NLRB 144 (1980).

⁶ *U.S. Pillow*, 137 NLRB 584, cited by our colleague, is clearly inapposite. In that case, the single-employer petition was filed during the term of a single-employer contract. In addition, as discussed above, the multiemployer unit here was not “of brief duration.”

⁷ *D & S Leasing*, 299 NLRB 658 (1990), enf. sub nom. *NLRB v. Centra, Inc.*, 954 F.2d 366 (6th Cir. 1992), cert. denied 513 U.S. 983 (1994).

freight industry. That contract was effective until March 1994. On January 28, 1994, the Petitioner timely filed the instant petition to represent the unit of dockworkers employed at the Employer's Cleveland facility.⁸

The record accordingly shows that the single employer unit was in existence for 4 years from 1982 to 1986 and was scheduled to continue for 2 additional years. In contrast, at the time the instant petition was filed, the multiemployer bargaining relationship had been in existence for about 16 months. Under the well-established precedent cited by the majority, the latter history of 16 months of bargaining in the broader unit is of a brief duration which is insufficient to rebut the presumption in favor of the petitioned-for single employer unit. See *U.S. Pillow Corp.*, 137 NLRB 584, 587 fn. 12 and cases cited therein (1962) (multiemployer bargaining of about a year considered brief duration).

Further, the majority acknowledges that even this relatively brief multiemployer bargaining history came about only as a result of the Employer's unlawful conduct in 1986. In these circumstances, the Board should be hesitant to assign controlling weight to that multiemployer bargaining history, and I decline to do so. I likewise cannot join my colleagues in assigning controlling

weight to two additional facts in this case: the successor multiemployer contract effective from April 1, 1994, to March 31, 1998; and the sketchy bargaining history asserted for the period 1986 to 1992. The former was reached only after the instant representation petition was filed, and thus has at best an attenuated connection to events during the relevant time period leading up to the filing of the petition. With respect to the latter period, the Employer abrogated its existing collective-bargaining agreement with Local 964, there was no signed and enforceable collective-bargaining agreement, the Employer did not recognize any union as the representative of the employees, and there is in essence no meaningful bargaining history during this period.

The majority has appropriately cautioned that determination of a unit's appropriateness will invariably involve factual situations—as here—peculiar to the employer and unit at issue. On careful consideration of the “peculiar” facts of this case, I would affirm the Regional Director's Decision and Direction of Election, which found the petitioned-for single employer unit to be appropriate, and conduct an election therein.

⁸ As the Regional Director recognized, a petition filed—as in this case—more than 60 days but less than 90 days before the expiration date of the contract is timely filed. *Leonard Wholesale Meats*, 136 NLRB 1000 (1962).