MEMBERS MURDOCK and STYLES took no part in the consideration of the above Supplemental Decision and Certification of Representatives.

AMERICAN RADIATOR AND STANDARD SANITARY CORPORATION (STAMPING PLANT) *and* UNITED STEELWORKERS OF AMERICA, CIO, PETITIONER

AMERICAN RADIATOR AND STANDARD SANITARY CORPORATION (BOND PLANT) *and* UNITED STEELWORKERS OF AMERICA, CIO, PETITIONER. *Cases Nos. 3–RC–558 and 3–RC–572. February 5, 1951*

Decision and Direction of Election

Upon separate petitions duly filed, a consolidated[1] hearing was held before Ralph E. Kennedy, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Herzog and Members Reynolds and Murdock].

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

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organizations involved claim to represent certain employees of the Employer.

3. The questions concerning representation:

The Intervenor, Local 64, United Office and Professional Workers of America,[2] contends that current collective bargaining contracts between it and the Employer are a bar to this proceeding. The Petitioner asserts that the contracts are not a bar because a schism in the membership of the Intervenor creates a doubt concerning the continued representation of the Employer's employees by the Intervenor. The Employer takes a neutral position on this issue.

Since 1944, the Employer has engaged in collective bargaining with the Intervenor for certain office workers in each of the two plants involved herein. Separate contracts have been executed for each plant, and the current contracts expire on March 31, 1952.

As a result of the expulsion of UOPWA from the Congress of Industrial Organizations and the proposed amalgamation of UOPWA

[1] The captioned cases were consolidated for hearing by order of the Regional Director dated November 15, 1950.

[2] The international union will be referred to herein as UOPWA.

with an independent labor organization, the Intervenor's membership in each of the bargaining units took steps to change their bargaining representative. On September 19, 1950, pursuant to proper notice circulated by the vice president and stewards of the Intervenor, a meeting was held by the Intervenor's members in the Stamping Plant (3–RC–558). Approximately 50 of the 110 employees in this unit attended the meeting, and unanimously voted to disaffiliate from UOPWA and to affiliate with the Petitioner. A similar meeting, notice of which was mailed to each employee by the president of the Intervenor, was held on October 11, 1950, by the Intervenor's members in the Bond Plant (3–RC–572). Approximately 40 of the 96 employees in the unit attended this meeting, and they too voted unanimously to disaffiliate from UOPWA and affiliate with the Petitioner. Uncontroverted testimony at the hearing indicates that all employees at the meetings signed authorization cards for the Petitioner, and that the other employees in each unit signed such cards later. There have been no meetings of the Intervenor since the disaffiliations, nor has the Intervenor since that time processed any grievances.

It appears from the uncontested evidence in the record that there is now no one in the plants representing the Intervenor, and that for all practical purposes the Intervenor is a defunct organization at these plants. It is clear, therefore, that the normal bargaining relationship between the Employer and the Intervenor has become a matter of such confusion, because of the events described above, that the relationship between them no longer can be said to promote stability in industrial relations. Under these circumstances, in accordance with established Board precedents,[3] we believe that the conflicting claims to representation of the two labor organizations involved can best be resolved by an election. Without deciding property rights or collective bargaining

[3] *Boston Machine Works Company*, 89 NLRB 59. See also *J. J. Tourek Manufacturing Co.*, 90 NLRB 5.

The Intervenor contends that the separate meetings of the employees in each plant did not constitute a meeting of the Intervenor, and therefore did not amount to the formalized collective action which the Board has held necessary to create a schism in the recognized bargaining representative. See *Telex, Inc.*, 90 NLRB 202; *Pacific-Gamble Robinson Company*, 89 NLRB 293. It is true that regular meetings of the Intervenor were attended by its membership in both plants. However, the two meetings were specially convened by the Intervenor's chief officers in each plant for the specific purpose of considering disaffiliation from UOPWA.

In view of the separate contract units at each plant, and in view of the fact that the two meetings covered all members of the Intervenor employed by the Employer, we do not believe that the failure of the two groups of employees to meet jointly for disaffiliation purposes militates against the application of the doctrines set forth in the *Boston Machine* and *Tourek* cases. See also *The Bassick Company*, 89 NLRB 1143, where the Board applied the schism doctrine despite separate disaffiliation meetings of the day and night shifts.

duties of the parties with reference to the current contracts,[4] we are of the opinion that these contracts are not a bar to a present determination of representatives.

We find that questions affecting commerce exist concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the act.

4. We find that employees in all classifications of office work in the Employer's Stamping and Bond plants, Buffalo, New York, including janitresses in the business offices and time-study and methods men, but excluding all other employees, confidential and professional employees, and supervisors as defined in the Act, constitute, in each plant, a separate unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.[5]

[Text of Direction of Elections omitted from publication in this volume.]

[4] While the Employer is agreeable to the disposition of the representation questioned by the Board, it contends that the current contracts should be honored until their expiration. The legal issues raised in this connection, however, cannot properly be determined by the Board in a representation proceeding under Section 9 (c) of the Act. Although the possible choice of a bargaining representative by these employees necessarily will operate to affect the rights and obligations of the parties, the duty of either party to bargain under existing or new contracts is a matter that must be determined by the application of other provisions of the Act in the light of a factual situation not now before us. See *Boston Machine Works Company, supra.*

[5] These units conform substantially to the current contract units which all parties agreed to be appropriate. We do not list the numerous job exclusions detailed in the contracts, as they appear to fall within one of the general exclusionary groups in the unit description.

CHERRY AND WEBB COMPANY, PROVIDENCE[1] *and* RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, CIO, PETITIONER. *Case No. 1–RC–1923. February 5, 1951*

Decision and Direction of Election

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Joseph Lepie, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Houston, Murdock, and Styles].

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

[1] The name of the Employer appears as amended at the hearing.