

no electricity is generated in the Employer's plant, all the electricity used being purchased. The laborer does janitorial work in the powerhouse. He and the station operators are the only employees in the unit sought who do their work in the powerhouse.

Upon the entire record, we perceive no justification for severing from the existing production and maintenance unit this group of employees who have heterogeneous skills and functions, and who work in different buildings in widely separated areas. Accordingly, we find that the proposed unit is inappropriate and we shall, therefore, dismiss the petition herein.¹

Order

IT IS HEREBY ORDERED that the petition herein be, and it hereby is, dismissed.

¹ Cf. *Scovill Manufacturing Company*, 75 NLRB 1266.

ACME QUALITY PAINTS, INC. and UNITED GAS, COKE AND CHEMICAL WORKERS OF AMERICA, CIO, PETITIONER. *Case No. 7-RC-1295.*
August 8, 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 W. A. Reinke, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.¹

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, Reynolds, and Styles].

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 Employer and Local 12222, District 50, United Mine Workers of America, herein called the Intervenor, contend that a collective bargaining contract effective from June 1, 1950, to May 31, 1952, is a bar to this proceeding. The Petitioner contends that the contract cannot operate as a bar because of schism in the membership of Local 12222.

¹ The petition and other formal papers are amended to show the correct name of the Employer.

On January 31, 1951, the president of Local 12222 called a special meeting of that Local to be held on February 4, 1951, at the Murray Local Hall, the usual meeting place. Notices of this meeting were posted on the Employer's bulletin boards on the evening of January 31, 1951.² On February 1, 1951, notices of the special meeting were distributed to employees at the gates of the plant. Both notices called attention to grievances against the Intervenor, but only the posted notices stated that the specific purpose of the meeting was to vote on the question of continued affiliation with the Intervenor. The posted notices were signed by Leonard Parent, president of Local 12222. The handbill notices were signed by 4 officers of the Local.³ This meeting on February 4, 1951, was attended by approximately 100 members,⁴ including the officers of the Local, who voted unanimously to disaffiliate from the Intervenor and to affiliate with the Petitioner.⁵ At this meeting the 4 officers who signed the handbill notices formally resigned from Local 12222, and were duly elected by the employees to a new organizing committee of the Petitioner.

In the meantime, on January 31, 1951, the day on which the notice of the February 4 meeting appeared on the bulletin board, the regional director of the Intervenor, learning of the secession movement, called a special meeting of Local 12222 for February 3, 1951.⁶ At this meeting, Parent and Massie were expelled from the Intervenor and new officers were elected.

On February 5, 1951, the Petitioner notified the Employer of the results of the disaffiliation meeting of February 4, and requested the Employer to recognize it as bargaining representative.⁷ On Febru-

² Albert Massie, Jr., recording secretary of Local 12222, testified that he posted the notices on January 31, 1951, but that they disappeared from the bulletin boards through sources unknown to him.

³ Leonard Parent, president, Albert Massie, Jr., recording secretary, James Frum, chief steward, and Charles Berry, steward.

⁴ Of approximately 385 employees at the plant, only 40 employees usually attend union meetings.

⁵ One of the officers, an adherent of the Intervenor, testified that only affirmative votes were requested and that there was no request for dissenting votes. The record, however, discloses that no objection was raised to this procedure by any of the members present.

⁶ The Intervenor's witness testified that approximately 120 employees attended this meeting. A witness for the Petitioner, however, testified that only 32 employees attended this meeting and that he was ordered out by the regional director.

⁷ The Employer and the Intervenor contend that in view of the fact that Parent and Massie were expelled at the February 3 meeting, they are no longer officers and could not legally call a meeting of Local 12222. We find no merit in this contention. At the time the notices for the February 4 meeting were posted, Parent and Massie were acting within their authority as officers of the Local and this authority could not be retroactively vitiated by the action of the regional director at the February 3 meeting. We likewise find no merit in the Employer's contention that the garnishment proceeding filed by Parent and three other officers in the circuit court for Wayne County on February 7, 1951, affected their positions as officers of Local 12222 on February 4. Moreover, it is not mandatory that a meeting for the purpose of disaffiliation of a local union be called by its president. *Fitzgerald Mills Corporation*, 95 NLRB 948.

ary 8, 1951, the Employer refused the recognition, alleging that the Intervenor was still functioning and able to administer its contract with the Employer. On February 23, the Petitioner filed the instant petition.

The Employer has continued to recognize the Intervenor as bargaining representative and the Intervenor has processed grievances and held regular monthly meetings attended by approximately 50 members. At no time, however, has the membership of the Intervenor, by formal action or otherwise, effectively repudiated the action for disaffiliation taken at the February 4 meeting. The foregoing circumstances indicate that the Intervenor is not defunct. However, the formal action to disaffiliate from the Intervenor and to affiliate with the Petitioner establishes that there has been a schism within the organization, which we find, for reasons stated in the *Boston Machine* case,⁸ removed the existing contract as a bar to a present determination of representatives.⁹

We find that a question affecting commerce exists concerning the representation of the Employer's employees within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. In accordance with the substantial agreement of the parties, we find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All production and maintenance employees at the Employer's Detroit, Michigan, paint plant, including truck drivers, janitors, hourly men in technical service, powerhouse employees, and production clerks working in the factory, but excluding office and salaried employees, watchmen,¹⁰ foremen, assistant foremen, and all other supervisors.

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

⁸ *Boston Machine Works*, 89 NLRB 59. See also *Harrisburg Railways Company*, 94 NLRB 1028. In view of this finding, we find it unnecessary to resolve other issues raised in the Petitioner's brief with respect to the validity of the contract between the Employer and the Intervenor.

⁹ The Employer moved at the hearing that, in the event the Board directs an election the Board should indicate that the certified representative has the responsibility of administering the contract already existing between the parties. For reasons previously stated, the motion is denied. *Boston Machine Works*, *supra*.

¹⁰ The Employer agreed to the inclusion of watchmen in the agreed contract unit, subject to the determination of the Board. As the record discloses that watchmen are primarily plant-protection employees, and spend more than 50 percent of their time as guards, we find that they are employed as guards within the meaning of the Act, and we shall exclude them from the appropriate unit. *C. V. Hill and Company, Inc.*, 76 NLRB 158, *Wiley Mfg. Inc.*, 92 NLRB 40.