In the Matter of CALIFORNIA STATE BREWERS INSTITUTE (ACME BREWERIES, GENERAL BREWING CORPORATION, RAINIER BREWING COMPANY, REGAL AMBER BREWING COMPANY, AND SAN FRANCISCO BREWING CORPORATION), EMPLOYER *and* UNITED STEELWORKERS OF AMERICA, CIO (SUCCESSOR TO MACHINISTS UNION, INDEPENDENT), PETITIONER

In the Matter of WESTERN CAN COMPANY, EMPLOYER *and* UNITED STEELWORKERS OF AMERICA, CIO (SUCCESSOR TO MACHINISTS UNION, INDEPENDENT), PETITIONER

In the Matter of EDWARD J. DREIS CO., LTD., EMPLOYER *and* UNITED STEELWORKERS OF AMERICA, CIO (SUCCESSOR TO MACHINISTS UNION, INDEPENDENT), PETITIONER

In the Matter of LIBERTY MACHINE & POLE LINE CO., EMPLOYER *and* UNITED STEELWORKERS OF AMERICA, CIO (SUCCESSOR TO MACHINISTS UNION, INDEPENDENT), PETITIONER

In the Matter of OSCAR KRENZ, INCORPORATED, EMPLOYER *and* UNITED STEELWORKERS OF AMERICA, CIO, (SUCCESSOR TO MACHINISTS UNION, INDEPENDENT), PETITIONER

Cases Nos. 20–R–1721, 20–R–1722, 20–R–1804, 20–R–1811, and 20–R–1817, respectively.—Decided February 14, 1947

Messrs. Gregory Harrison, Richard Ernst, E. R. Herchner, and *James G. Hamilton*, all of San Francisco, Calif., for the Institute.

Mr. Paul St. Sure, of Oakland,, Calif., and *Mr. Leo Rabinowitz*, of San Francisco, Calif., for Western.

Mr. Edward M. Dreis, of San Francisco, Calif., for Dreis.

Messrs. Walter E. Drobisch and *Alfred Myers*, both of San Francisco, Calif., for Krenz.

Messrs. J. H. Sapiro, E. F. Dillon, and *Harry Hook*, all of San Francisco, Calif., and *Mr. Philip M. Curran*, of Pittsburgh, Pa., for the Petitioner.

Mr. A. C. McGraw, of Oakland, Calif., and *Mr. Charles B. Truax*, of San Francisco, Calif., for the Intervenor.

Mr. Sydney S. Asher, Jr., of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTIONS

Upon separate amended petitions duly filed, a consolidated [1] hearing in these cases was held at San Francisco, California, on August 5, 6, and 7, 1946, before Robert E. Tillman, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Institute, Western, and Krenz each moved to dismiss the petitions in the cases applicable to their respective employees, and the Intervenor moved to dismiss the petition in all cases.[2] For reasons stated in Sections II, III, and IV, below, all the motions are hereby denied. After the hearing, the Intervenor moved to consolidate all cases herein with Cases Nos. 20–R–1806, 20–R–1815, and 20–R–1816, concerning respectively, employees of California Metal Trades Association, Ace Manufacturing and Supply Company, and Belmont Engineering Company. Although these latter cases involve some issues which concern us here, there are factual differences which make further consolidation undesirable. We therefore deny the Intervenor's motion.

Upon the entire record in the consolidated cases, the National Labor Relations Board makes the following:

Findings of Fact

I. THE BUSINESS OF THE EMPLOYERS

California State Brewers Institute, herein called the Institute, is a California corporation having as members producers of brewery products in California. The Institute represents various of its members, including the five companies named below, in collective bargaining negotiations with labor organizations.

[1] At the hearing, the Petitioner moved to withdraw its petition in Case No. 20–R–1811, on the ground that Liberty Machine & Pole Line Co. employed only one employee within the alleged appropriate unit. This motion is hereby granted, Case No. 20–R–1811 is hereby severed from the remaining cases, and the petition in that case is hereby dismissed without prejudice.

[2] The Intervenor moved to dismiss the petitions in Cases Nos. 20–R–1721 and 20–R–1722 on the grounds that there are now contracts in existence which are bars to present elections, and that the petitions were not timely. In Cases Nos. 20–R–1804, 20–R–1811, and 20–R–1817, the Intervenor sought dismissal of the petitions on the same grounds, plus the additional grounds that there were insufficient showings of interest on the part of the Petitioner, and that the units sought were inappropriate.

The Institute moved to dismiss the petition in Case No 20–R–1721 on the ground that the existing contract is a bar to a present election.

Western moved to dismiss the petition in Case No 20–R–1722 on the grounds that the contract is a bar and that the unit sought is inappropriate.

Krenz moved to dismiss the petition in Case No 20–R–1817 on the grounds stated by the Intervenor.

Acme Breweries, General Brewing Corporation, Rainier Brewing Company, Regal Amber Brewing Company, and San Francisco Brewing Corporation are California corporations having their principal offices and places of business in San Francisco, California, where they are each engaged in the production and sale of brewery products. They are all members of the Institute. Each of the companies ships substantial quantities of its finished products from its plant to points outside the State of California. The percentage of products annually so shipped by each of the companies in 1945 and 1946 is as follows: Acme Breweries, more than 17 percent of its total annual production; General Brewing Corporation, more than 4 percent of its total annual production; Rainier Brewing Company, more than 5½ percent of its total annual production; Regal Amber Brewing Company, more than 2.48 percent of its total annual production; and San Francisco Brewing Corporation, more than 3.2 percent of its total annual production. For the purpose of this proceeding, each of the brewing companies admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

Western Can Company, herein called Western, is a department of M. J. B. Company, a Delaware corporation, having its principal place of business in San Francisco, California, where Western is engaged in the business of fabricating metal cans. The value of raw materials purchased annually by Western exceeds $1,000,000, of which approximately 70 percent is purchased and shipped to Western from sources outside the State of California. Western's annual sales of its products and materials exceeds $1,500,000 in value, of which in excess of 10 percent is sold and shipped to customers located outside the State.

Edward J. Dreis Co., Ltd., herein called Dreis, is a California corporation having its only shop in San Francisco, California, where it is engaged in the manufacture of squaring shears used in the cutting of sheet metal. The value of raw materials purchased annually by Dreis exceeds $25,000, of which approximately 20 percent is purchased and shipped to Dreis from sources outside the State of California. Dreis annually sells products valued in excess of $45,000, of which approximately 11 percent is sold and shipped to customers located outside the State.

Oscar Krenz, Incorporated, herein called Krenz, is a California corporation having its principal office and place of business in San Francisco, California, and a second plant in Oakland, California. Krenz is engaged in the manufacture of equipment used in the processing of foods, wines, and chemicals. The value of raw materials purchased annually by Krenz for use at its two plants exceeds $75,000, of which approximately 60 percent is purchased and shipped to the plants from sources outside the State of California. Krenz annually sells prod-

ucts valued in excess of $285,000, of which approximately 14 percent is sold and shipped to customers located outside the State.

Each of the Employers admits, and we find, that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

The Intervenor maintains that the Petitioner is not a labor organization within the meaning of the Act on the ground that the Petitioner's predecessor, Machinists Union, Independent, herein called the Independent, was not a labor organization. Whatever the status of the Independent while it existed, the Petitioner itself is unquestionably a labor organization as defined by Section 2 (5) of the Act, and we so find.

San Francisco Lodge No. 68, affiliated with the International Association of Machinists, herein called the Intervenor, is a labor organization claiming to represent employees of the Employers.

III. THE QUESTIONS CONCERNING REPRESENTATION

A. The background

For many years, Lodge 68 of the International Association of Machinists, herein called Lodge 68, has bargained for tool and die makers, machinists, specialists, helpers and apprentices employed by most uptown [3] shops in San Francisco and vicinity. From 1938 to 1944, Lodge 68 entered into Association-wide collective bargaining contracts with the California Metal Trades Association, an association of employers, herein called the Association, and also executed separate usually identical contracts with individual firms which either were not members of the Association or, if they were members, did not choose to be bound by Association-wide agreements. The Association and Lodge 68 were unable to agree on the terms of a new contract in 1944. Although no Association-wide contract was signed in that year Lodge 68 did negotiate about 55 separate bargaining contracts with as many different firms in 1944 and 1945.

In the fall of 1945, Lodge 68 served demands for a wage increase on all the employers in the San Francisco area, including the Association, with whom it had previously had contractual relations. To enforce its demands, Lodge 68 called a strike beginning October 29, 1945. Some individual firms signed contracts with Lodge 68 before the date of the strike, others signed agreements after the commencement of the strike. The signing of an agreement by an employer either prevented a strike or marked its termination. The Association, however,

[3] Uptown shops are defined as manufacturing, contract jobbing, and general machine contract shops.

refused to accede to the demands of Lodge 68 and the machinists of such members as adhered to it remained out on strike.

On February 16, 1946, the Executive Council of the Grand Lodge of the International Association of Machinists, herein called the International, which had not authorized the strike, arrived in San Francisco to investigate the strike situation. The next day, the International's representatives conferred with officers of Lodge 68. On February 20, 1946, the Association submitted proposals for a new agreement to Lodge 68 and the International. These proposals provided for a wage increase considerably less than the wage increase demanded by Lodge 68. The International called a membership meeting of Lodge 68 on February 26, 1946, to discuss the proposals of the Association, but nothing was accomplished.

On February 27, 1946, the International sent letters to all members of Lodge 68 setting forth the terms of the Association's proposals. The members were asked to ballot as to whether (1) the proposals were acceptable, and (2) the International should sign a contract with the Association in behalf of Lodge 68. About 7,500 ballots were mailed out and 2,750 were returned. Of the returned ballots, approximately 2,400 answered both questions in the affirmative. On March 3, 1946, Lodge 68, at the call of its local officials, held a special meeting at which the proposals of the Association were rejected by a vote of 2,198 to 624.

On March 5, 1946, the International notified the officers of Lodge 68, in writing, that the President of the International had filed charges against Lodge 68, that a trial would be had on these charges on March 11, 1946, and that, pending this hearing, Lodge 68 was restrained from taking further actions of any kind. On March 7, 1946, the International notified the Association of the suspension, and commenced to negotiate with the Association for a new contract.[4]

On March 10, 1946, a special meeting of Lodge 68 was held, at which approximately 4,000 members attended.[5] Admission was granted only to members of Lodge 68 in good standing. The overwhelming majority of members present voted not to send a delegation to the hearing before the International, and to secede from the International Association of Machinists. The officers of Lodge 68 were instructed to form an independent union. All officers of Lodge 68 joined in the secession. On March 11, 1946, the newly formed independent union, under the name of Machinists Union No. 68,[6] notified all the Employers

[4] In *California Metal Trades Association, et al.*, 72 N L. R B. 624, issued this day, the testimony was to the effect that the Association did not commence to bargain with the International until March 11, 1946.

[5] At this time, the membership of Lodge 68 was approximately 8,000

[6] The name of the independent union was subsequently changed to Machinists Union, Independent

involved herein that their machinists had transferred their allegiance from Lodge 68 to the Independent. On the same day, the International held a hearing on the charges and suspended Lodge 68.

On March 12, 1946, the International, in behalf of Lodge 68, signed a collective bargaining contract with the Association. This contract, referred to herein as the master contract, provided that it should remain in effect until March 31, 1947, and should continue in effect for 1 year thereafter, unless either party gave written notice to the other of desire to alter, amend, or terminate, at least 30 days before the expiration date. On March 14, 1946, the International sent letters to all members of Lodge 68 advising them that the contract had been signed and that they should, therefore, return to work. On March 18, 1946, the strike came to an end.

Since the schism in its ranks, Lodge 68 has been governed by officials appointed by the International. Lodge 68 has, however, continued to collect dues, hold membership meetings and elect shop stewards and committeemen. At the time of the hearing it had 6,800 members.

On June 16, 1946, the Independent voted to affiliate with the Petitioner and was chartered on July 3, 1946, with the same officers.

B. The Institute

The Institute has bargained with Lodge 68 since 1936. The first written contract entered into between the Institute and Lodge 68 was in either 1937 or 1938. On April 1, 1944, Lodge 68 and the Institute signed a collective bargaining contract for a 1-year term, renewable for an additional year in the absence of written notice by either party to the other of desire to alter, amend, or terminate, at least 30 days before the termination date. This contract provided that its wage provisions could be reopened. Neither party gave the required 30 days' written notice in 1945. On October 26, 1945, however, the parties signed an interim agreement providing for higher wages to be effective from October 29, 1945, until March 31, 1946. At the same time, the parties signed a stipulation in which they agreed:

> In the event a master agreement is accepted by the Lodge for its jurisdiction, the terms and conditions of said master agreement shall apply to and be incorporated in the collective bargaining agreement entered into this day by the parties hereto.

On March 11, 1946, after the schism, the Independent sent a letter to the Institute advising it of the change of affiliation by the machinists employed in the breweries and claiming that the Independent was now the legal party to the contract. The Institute made a noncommittal answer.

On March 27, 1946, the Independent wrote to the Institute notifying the latter that it represented a majority of the brewery machinists and demanding that the Institute recognize it and bargain with it for a new contract. On March 29, 1946, the Institute replied, asserting that it already had an existing valid contract, by which it was bound. On March 31, 1946, Lodge 68 presented a new proposed contract to the Institute (presumably identical with the master contract) which the Institute refused to sign, on the ground that it already had a contract to run concurrently with the master contract. On April 1, 1946, the Independent filed its petition herein with respect to the machinists employed by the breweries.[7]

C. Western

Western's bargaining relations with Lodge 68 go back 20 years or more. On April 1, 1944, Western and Lodge 68 signed a collective-bargaining contract for a term of 1 year, renewable for an additional year in the absence of written notice by either party to the other of desire to alter, amend, or terminate, at least 30 days before the expiration date. This contract provided for reopening of the wage clause on 5 days' notice. On February 28, 1945, the contract was amended by providing that the wage clause could be reopened on 30 days' notice, but in all other respects the contract was continued in effect. Pursuant to the provision permitting reopening, Western and Lodge 68, on October 25, 1945, signed an interim agreement providing for increased wages until March 31, 1946. At the same time, the parties also executed a stipulation identical with that signed by the Institute and Lodge 68.

On March 11, 1946, after the schism, the Independent sent a notice to Western advising the latter of the change of affiliation by its machinists, and asserting that the Independent was now the legal party to the contract. On March 25, 1946, Western signed a contract with the International, acting in behalf of Local 68, identical with the master contract.[8] On March 29, 1946, the Independent sent a letter to Western notifying Western that it represented a majority of its machinists, demanding recognition as their bargaining agent and requesting negotiations for a new contract. On April 1, 1946, the Independent filed its petition herein with respect to Western's machinists.[9]

[7] After the Independent became affiliated with the Petitioner, an amended petition was filed by the Petitioner, as successor to the Independent

[8] This was a single document signed by Western and a number of other individual employers, including Dreis and Krenz

[9] After the Independent became affiliated with the Petitioner, an amended petition was filed by the Petitioner, as successor to the Independent

D. Dreis

Dreis first signed a written contract with Lodge 68 in 1941. The record is not clear as to whether or not Dreis had a contract with Lodge 68 in 1944. In September 1945, Lodge 68 notified Dreis of its demand for increased wages and on October 29, 1945, the machinists employed by Dreis went out on strike. On November 21, 1945, Dreis and Lodge 68 signed a collective bargaining agreement, Section 21 of which provided that it was to remain in effect until March 31, 1946, and continue in effect for 1 year thereafter, unless either party gave to the other written notice of desire to alter, amend, or terminate, at least 30 days before the termination date. Lodge 68 and Dreis simultaneously signed a stipulation identical with that signed by the Institute and Lodge 68.

On March 11, 1946, after the schism, the Independent sent a notice to Dreis similar to that which it sent to the Institute and Western. On March 12, 1946, Dreis sent a letter to Lodge 68 in which Dreis stated that it was terminating the contract "as provided for in Section 21." On March 25, 1946, Dreis signed a contract with the International, acting in behalf of Lodge 68, which was identical with the master contract.[10] On June 17, 1946, the Petitioner, as successor to the Independent, filed its petition herein with respect to the machinists employed by Dreis.

E. Krenz

Krenz has been bargaining with Lodge 68 for 39 years. It is a member of the Association but has never, except in 1 year, given the Association a power of attorney to represent it in bargaining with Lodge 68. The first written contract between Krenz and Lodge 68 was in 1936. Krenz had no contract with Lodge 68 in 1944. In September 1945, Lodge 68 notified Krenz that it was demanding increased wages and on October 29, 1945, Krenz's machinists went on strike. On January 22, 1946, Krenz signed a contract which was to be effective until March 31, 1946, and was to continue in effect for 1 year thereafter unless either party gave written notice to the other of desire to alter, amend, or terminate, at least 30 days before the termination date. Simultaneously, Krenz and Lodge 68 signed a stipulation identical with that signed by Lodge 68 and the Institute.

On March 11, 1946, after the schism, Krenz received a notice from the Independent identical with notices received on that day by the Institute, Western, and Dreis. On March 25, 1946, Krenz and the International, acting in behalf of Lodge 68, signed a contract identical with the master agreement between the International and the

[10] See footnote 8.

Association.[11] On June 28, 1946, the Petitioner, as successor to the Independent, filed its petition herein with respect to the machinists employed by Krenz.

F. Conclusions

The Employers and the Intervenor contend that the contracts between the Employers and the International constitute bars to any present elections, especially since none of the petitions was filed within 10 days after the Independent's initial demands for recognition.[12] The Petitioner, on the other hand, maintains that the 10-day rule should not be applied here.

We find it unnecessary to consider the contract bar question in the form in which it has been raised. All the contracts which are urged as a bar may be terminated on March 31, 1947, less than 2 months from the present time, upon appropriate notice by the parties thereto. Under these circumstances, we find that the existing contracts are not bars to current determinations of representatives.[13]

The Intervenor maintains that no questions concerning representation have arisen, inasmuch as the Petitioner has not made sufficient showings of interest. This contention is without merit. We are satisfied that the Petitioner's showings of interest, which were submitted to the Board for administrative reasons, are adequate.

We find that questions affecting commerce have arisen concerning the representation of employees of the Institute, Western, Dreis, and Krenz, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNITS

The Petitioner seeks separate units of tool and die makers, machinists, specialists, helpers and apprentices employed respectively by Western, Dreis, and Krenz, and a single unit of maintenance machinists and their helpers employed by the five brewery companies belonging to the Institute. The Intervenor and the Employers, while agreeing to the categories of employees to be included in the units, contend that only an area-wide unit is appropriate.

In support of their contention, the Employers and Intervenor argue that, from at least 1938, Lodge 68 has insisted upon uniform wages and working conditions for all of its members employed in the uptown shops in the San Francisco area and that the contracts negotiated with the Association have been the master contracts to which all separate contracts have conformed. The broadest unit which the Board is authorized to find appropriate under Section 9 (b) of the Act is the "employer unit." The term "employer" is here used as

[11] See footnote 8

[12] Cf *Matter of General Electric X-Ray Corporation*, 67 N. L. R. B. 997

[13] *Matter of Clark Bros. Co., Inc.*, 66 N. L. R. B. 849

defined in Section 2 (2), that is, it "includes any person acting in the interest of an employer, directly or indirectly." To group the employees of different employers in a single "employer" unit, it is necessary to find that some one person or organization has the power to act for and to bind the various employers. No such situation exists in the present case. The Association acts only for its members in negotiating and signing the master contract; the individual firms signing separate contracts act for themselves. Thus, the Association is one employer and the companies signing separate agreements are separate employers within the meaning of the Act. As we said of a similar collective bargaining history in the *Advance Tanning* case [14] in rejecting an area-wide unit, this kind of bargaining "cannot be considered as true collective bargaining on an area-wide basis covering employees of both the Members and the Independents, particularly since the Independents were in no way obligated to follow the Association's lead." [15] Accordingly, we are of the opinion that the area-wide unit sought by the Intervenor and the Employers is not appropriate.

The only unit question remaining is as to the propriety of the Institute unit. As previously indicated, the Institute has, for a number of years, entered into collective bargaining contracts with Lodge 68 concerning the machinists employed by its members. None of the parties denies that the Institute has the authority to make such binding collective bargaining agreements. We find, therefore, that the Institute is the employer of the machinists of the five brewery firms involved herein within the meaning of Section 2 (2) of the Act, and that these employees constitute a single appropriate unit.

We find that each of the following units, excluding from each unit all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, is appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

1. All maintenance machinists and helpers employed by Acme Breweries, General Brewing Corporation, Rainier Brewing Company, Regal Amber Brewing Company and San Francisco Brewing Corporation, at their plants in San Francisco, California.

2. All tool and die makers, maintenance machinists, machinists, specialists, helpers and apprentices employed by Western Can Company at its plant in San Francisco, California.

3. All tool and die makers, machinists, specialists, helpers and apprentices employed by Edward J. Dreis Co., Ltd.

4. All tool and die makers, machinists, specialists, helpers and apprentices employed by Oscar Krenz, Incorporated.

[14] *Matter of Advance Tanning Company, et al.*, 60 N. L. R. B. 923.

[15] See also *Matter of Rubin E. Rappeport & Sons, et al.*, 62 N. L. R. B. 1118, and *Matter of Waterfront Employers Association of the Pacific Coast, et al.*, 71 N. L. R. B. 80.

V. THE DETERMINATIONS OF REPRESENTATIVES

We shall direct that the questions concerning representation which have arisen be resolved by elections by secret ballot, subject to the limitations and additions set forth in the Direction.

The Petitioner requests that eligibility to vote be determined by the pay-roll period immediately preceding the filing of the petition in each case, on the ground that there is a possibility of the discharge of its members under the provisions of the existing agreements. We perceive no merit in this argument as a basis for departing from our usual eligibility rule. We shall, therefore, direct that employees within the appropriate units who are employed during the pay-roll period immediately preceding the issuance of the Direction of Elections shall be eligible to vote.

DIRECTION OF ELECTIONS

As part of the investigations to ascertain representatives for the purposes of collective bargaining with California State Brewers Institute (Acme Breweries, General Brewing Corporation, Rainier Brewing Company, Regal Amber Brewing Company, and San Francisco Brewing Corporation), San Francisco, California, Western Can Company, San Francisco, California, Edward J. Dreis Co., Ltd., San Francisco, California, and Oscar Krenz, Incorporated, San Francisco, California, four separate elections by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Twentieth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Sections 203.55 and 203.56, of National Labor Relations Board Rules and Regulations—Series 4, among the employees in each of the units found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the elections, to determine in each case whether they desire to be represented by United Steelworkers of America, CIO (successor to Machinists Union, Independent), or by International Association of Machinists, for itself and in behalf of its subordinate lodge, San Francisco Lodge No. 68, for the purposes of collective bargaining, or by neither.

MR. JAMES J. REYNOLDS, JR., took no part in the consideration of the above Decision and Direction of Elections.