

interstate commerce which require employees to join, maintain their membership in, or obtain or retain working permits from this Union as a condition of hire or employment, except to the extent that such agreement may be authorized under the proviso to Section 8 (a) (3) of the Act.

WE WILL NOT cause or attempt to cause the Contractors of Bloomington-Normal, their officers, agents, successors, or assigns, to discriminate against employees or applicants for employment in violation of Section 8 (a) (3) of the Act.

WE WILL NOT in any other manner restrain or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL immediately notify J. L. Wroan & Son in writing and furnish copies to Delvyn Smith and Elvin G. Jacob, that we do not object to, but on the contrary now request, that company to employ Delvyn Smith and Elvin G. Jacob.

WE WILL make Delvyn Smith and Elvin G. Jacob whole for any loss of earnings they may have suffered because of the discrimination against them.

LOCAL NO. 63, UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS OF AMERICA, AFL,
Labor Organization.

Dated By.....
(Representative) (Title)

.....
KENNETH PEARL

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,
Petitioner *and* INSURANCE AGENTS' INTERNATIONAL
UNION, LOCAL NO. 10, A.F.L. *and* ASSOCIATED LIFE
INSURANCE AGENTS OF MARYLAND, Case No. 5-RM-244.
July 21, 1953

DECISION AND ORDER

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Henry L. Segal, 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, Styles, and Peterson].

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. No question affecting commerce exists 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 for the following reasons:

Insurance Agents' International Union, Local No. 10, A.F.L., an intervenor, herein called Local 10, contends that it has a contract with the Employer which bars this proceeding. Asso-

ciated Life Insurance Agents of Maryland, another Intervenor, herein referred to as Associated, also urges that the contract is a bar, and, further, that the contract rights had been assigned to it by formal action of the membership of Local 10. Alternatively, Associated argues that, if the Board fails to find that it is the contractual successor to Local 10, the Board should direct an election because a schism has occurred within the ranks of Local 10. The Employer takes no position with respect to these contentions.

On June 11, 1943, Federal Local 23007, the predecessor to Local 10, was certified by the Board as the exclusive bargaining representative for all district agents of the Employer whose debits were located in Maryland. At the same time, sister locals were separately certified as the bargaining representatives for agents in Virginia, Delaware, and the District of Columbia. These locals, which were directly chartered by the American Federation of Labor, executed separate contracts with the Employer for some years thereafter. In 1946, the National Federation of Insurance Agents' Council, herein called the Council, was established by the American Federation of Labor to correlate the activities of the various locals. In 1949, the Council was certified as the bargaining representative for agents in a 31-State unit which excluded the Maryland, Delaware, Virginia, and District of Columbia units.¹ In that year, the Council executed a contract with the Employer covering the employees for which it was certified. Concurrently, Federal Local 23007 executed an identical agreement, covering the Maryland unit, jointly with the separately certified locals who signed for their respective units. In May 1951, the Council was granted an international charter by the American Federation of Labor and assumed the name of Insurance Agents' International Union, herein called the IAIU.² Federal Local 23007 was then designated as Local 10.

During negotiations in 1951 with the Employer for a master agreement covering its 31-State unit, the IAIU successfully induced the Virginia, Delaware, and District of Columbia locals to relinquish their local autonomy over bargaining matters and to be included in the master agreement. Local 10, however, declined to do so and, after separate negotiations with the Employer, executed a contract with it on February 18, 1952, which was to run to March 4, 1954. The Local 10 contract, although identical with the master agreement regarding substantive terms, provided that checked-off dues were to be remitted directly to Local 10, and only Local 10 committeemen were authorized to handle the grievances of its members.

On March 7, 1952, the IAIU filed with the Board a motion to consolidate units by including the Maryland unit, represented by Local 10, in its multistate unit. Shortly thereafter, at a meeting of Local 10 called for that purpose, its membership resolved to retain its separate autonomy and to oppose the

¹80 NLRB 1583, supplemented by 81 NLRB 295

²The IAIU did not intervene in this proceeding.

IAIU motion. On April 10, 1952, over the protest of Local 10, which wanted a determination of the controversy on the merits, the Board granted the IAIU request to withdraw the motion to consolidate. The following day, the IAIU notified Local 10 that it would not seek to compel consolidation, but exhorted Local 10 to accede to consolidation voluntarily.

During the early part of 1952, the IAIU engaged in negotiations with the Employer with respect to an agreement regarding the sale of a new sickness and accident policy which the Employer contemplated offering to the public. These negotiations apparently dragged on for several months without a definitive agreement being reached. On June 30, 1952, the president of Local 10 informed the IAIU that its members were desirous of concluding an agreement concerning the sale of this type of insurance because of the additional commissions they would derive therefrom, and that it had begun negotiations on its own behalf with the Employer concerning the matter. The president of Local 10 also inquired whether the IAIU contemplated reconvening its negotiating committee to meet with the Employer on this subject. After an exchange of correspondence, in which the IAIU cautioned Local 10 not to negotiate separately with the Employer over the new insurance plan, the membership of Local 10 voted overwhelmingly to accept the Employer's proposals relative to the sale of the sickness and accident insurance, and a supplemental agreement was executed between Local 10 and the Employer embodying these proposals. Immediately thereafter, the IAIU was notified by Local 10 of the action thus taken.

At a meeting of the IAIU executive board in November 1952, it adopted a resolution calling upon Local 10 to submit to inclusion in the nationwide unit or be expelled from the IAIU. This resolution was communicated to the president of Local 10 on December 5, 1952, with instructions that a meeting of the local be called within 10 days for the purpose of having the members repudiate its former position and agree to be governed by the nationwide agreement. Accordingly, a regular Local 10 membership meeting was called for December 12. It was immediately preceded by a meeting of the Local's executive board, which voted 14-3 to recommend to the membership rejection of the IAIU directive. At the regular meeting, attended by approximately 43 out of a total membership of 181,³ 40 members voted to poll all members as to whether they desired to accept or reject the IAIU proposal. Ballots were thereupon mailed to the members together with notification that a regular meeting was scheduled for January 9, 1953, for the purpose of tabulating the results of the poll.

At the January 9 meeting, which was attended by approximately 70 members, the votes were opened and counted, and revealed that 135 members voted to reject the IAIU directive, 19 voted in favor of it, and there was 1 void ballot. A motion was made and carried by a vote of 56 to 10 to disaffiliate from the IAIU and to form the Associated, to assign the Local

³Usual attendance at such Local 10 meetings averaged 23 members.

10 contract as well as all assets and property to the Associated, to accept all officers of Local 10 as officers of the Associated, to dissolve Local 10 and return its charter to the IAIU, and to inform the Employer and the IAIU of the action taken. It was then agreed to conduct a mail ballot among all members of Local 10 to determine whether or not action taken on January 9 was agreeable. A special meeting was scheduled for January 14 for the purpose of tabulating the results of this poll, which revealed that 124 members voted in favor of the motion, 33 voted against it, and 1 ballot was void. The IAIU and the Employer were notified of the results of the poll.

Since the meeting of January 9, 1953, the Associated has held regular scheduled meetings attended by the same number of members as previously attended Local 10 meetings, at least 145 of the 180 members of Local 10 canceled their checkoff authorizations with the Employer and designated the Associated as the recipient of their dues, and the Associated has requested recognition by the Employer. The Employer refused to recognize the Associated, but agreed to process grievances with the Associated's grievance committeemen in their individual capacities, and they have been thus handling grievances on behalf of their members.

On January 13, 1953, the IAIU, having been apprised of the disaffiliation action of January 14, voted to suspend Local 10, its officers, and executive board, and to appoint a trustee. The IAIU sent out forms to the members of Local 10 asking them to reaffirm their loyalty to the Local, and also requested recognition by the Employer. On March 27, 1953, Local 10 held its first meeting called by the trustee and the IAIU president, at which 4 of the normal complement of 8 officers were selected and grievance committees for a few Maryland districts were appointed. Neither the minutes of this meeting, nor those of a subsequent meeting of Local 10, reveal the number of members who attended.

On February 6, 1953, after receiving the conflicting claims to representation of its Maryland agents, the Employer sent letters to the IAIU and the Associated in which it stated that the organizations should present their claims to the Board for determination of the issue. Meanwhile, the Employer withheld the use of the bulletin boards and held the checked-off dues in escrow. After neither organization availed itself of the Board's processes to determine the validity of their rival claims, the Employer filed the instant petition.

In The Louisville Railway Company case,⁴ under circumstances closely paralleling those herein, the Board held that the assignment of a contract by a local, to which its international was not a signatory, to a newly formed successor labor organization, did not destroy the continuing identity of the contractual bargaining representative, and that the

assigned contract between the successor and the employer constituted a bar. Finding that no schism had occurred under those circumstances, the Board stated that that case was analogous to decisions in which it held that a mere change of affiliation of the contracting union did not disturb the continuing identity of the contractual bargaining agent, and noted that--

The fact that at a later date a faction of [the local] sought to repudiate its assignment of the contract and reestablish [the local] as the representative of the employees of the Employer, does not disturb the stability of the bargaining relationship between the Employer and the [successor], nor create a 'schism'. At the hearing in this proceeding, [the local] contended that it now represents approximately 245 employees who had previously joined [the successor]. The position of [the local], therefore, is substantially the same as that of any rival union which seeks designation as a representative of an Employer's employees at an inappropriate time.

We believe that our decision in the Louisville case, and related decisions,⁵ is controlling here. In the instant case, Local 10 alone had been certified as the exclusive bargaining representative of the Employer's Maryland agents, and had separately bargained for and executed the contract here involved. After the membership of Local 10 voted to disaffiliate from the IAIU, dissolve Local 10, and assign its contract to the newly formed Associated, the Associated succeeded to the contract with the Employer. Accordingly, the attempt by the minority group which remained in Local 10 to repudiate the assignment and breathe new life into the Local, in our opinion, placed Local 10 in "substantially the same [position] as that of any rival union which seeks designation as representative of an Employer's employees at an inappropriate time."

On the basis of the foregoing, and the entire record in this proceeding, we find, contrary to the contention of Local 10, that the Associated succeeded to the existing contract with the Employer and is currently the administrator of that contract. Accordingly, we conclude that the contract is a bar and we shall therefore dismiss the petition.⁶

[The Board dismissed the petition.]

⁵See, e.g., Chesapeake & Potomac Telephone Company, 89 NLRB 231.

⁶In view of this conclusion, we find it unnecessary to pass upon the Associated's alternative contention that a schism has occurred within the ranks of Local 10.

Likewise, while the Associated and Local 10 requested at the hearing that the Board adjudicate their respective rights in the property and assets of Local 10, in accordance with our usual policy, we shall not pass upon this matter.