

apprenticeships; 1, a former guard who took GI adult education training, was given a tool and die classification after a probation tryout period; and another, a production worker, with 9 months trade schooling and a short apprenticeship, was promoted to the classification. Because trained tool and die makers are not available, the Employer hires applicants for work on the basis of their varied apprenticeship training and prior experience in machine shops and on machine repair and after they have satisfied the toolroom foreman that they can do the type of tool and die work needed by the Employer at this plant. While it is generally true that 1 or more of the 6 most skilled tool and die makers at the plant could perform the precision work usually associated with their trade name, the Employer does not have enough of such work to supply them with work on any full-time basis. Further, the urgent need to get and keep production machines in operation to meet time schedules requires a constant overlapping of assignments between general maintainers and tool and die makers, depending on the skills and availability of men when needed, so that tool and die makers are called upon to do work requiring lesser skills. It seems clear, therefore, (1) that the employees classified as tool and die makers whom the Petitioner would sever as a craft unit do not have the high degree of skills associated with this craft, and (2) that the work available at the plant is not such as to require a high degree of skill or furnish opportunities for the exercise of tool and die precision on any substantial or broad craft basis. Under these circumstances, and in accord with our recently declared policy,³ we dismiss the petition, finding that the proposed unit for the Employer's tool and die makers is not appropriate for severance at this time.⁴

[The Board dismissed the petition.]

³ American Potash & Chemical Corporation, 107 NLRB 1418.

⁴ The fact that the Employer anticipates possible changes in the number and work of its tool and die makers at the termination of its present contract obligations does not bear upon the determination of the unit appropriate for these employees at this time.

A. C. LAWRENCE LEATHER COMPANY *and* CONGRESS OF INDUSTRIAL ORGANIZATIONS, Petitioner. Case No. 9-RC-2086. April 23, 1954

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 Richard C. Curry, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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 Petitioner and the Intervenor, International Fur and Leather Workers Union of the United States and Canada and its Local No. 310, herein also called IFLWU, are labor organizations claiming to represent certain employees of the Employer.

3. The Intervenor contends that its existing contract constitutes a bar to this proceeding. The contract, entered into June 25, 1952, is effective from July 13, 1952, to July 13, 1954, and contains a 60-day automatic renewal clause. The contract covers substantially the unit requested by the Petitioner. The Petitioner contends that because of a schism in the Intervenor, the contract is not a bar. The Employer is neutral with respect to this issue.

The Employer's employees have been organized over 10 years. In 1943, the Board certified CIO Local Industrial Union 1298 as their bargaining agent. Representation of the employees was thereafter turned over to the International Fur and Leather Workers Union, affiliated with the CIO, and the employees were set up as Local No. 310, IFLWU.

In 1949 the eleventh constitutional convention of the CIO added a new provision to the CIO constitution empowering the executive board to expel any union "the policies and activities of which are consistently directed toward the achievement of the program or the purposes of the Communist Party, any fascist organization, or other totalitarian movement, rather than the objectives and policies set forth in the Constitution of the CIO."¹ Pursuant to this provision charges were filed with the executive board against several unions, including the IFLWU; and the executive board made provision for notice and hearings on the charges. About May 22, 1950, the IFLWU resigned from the CIO. On June 15, 1950, the executive board adopted a resolution expelling the IFLWU and canceling the certificate of affiliation previously granted that Union. The twelfth constitutional convention of the CIO in November 1950 approved the action of the executive board.²

Approximately 110 of the Employer's 129 employees were members of Local 310, IFLWU, which held meetings each month. At the regular monthly meeting of the Local on August 25, 1953, the members present voted unanimously to disaffiliate from IFLWU, and to withdraw the Local's funds on deposit at the bank and redeposit them to the personal joint account of Local 310's president and secretary-treasurer until the Local had been accepted by another union. The membership had been given no advance notice that such action would be considered

¹Proceedings 1949, Eleventh Constitutional Convention, Congress of Industrial Organizations, p. 288.

²Proceedings 1950, Twelfth Constitutional Convention, Congress of Industrial Organizations, p. 477.

at its regular meeting, but more than the average number of members in attendance at regular meetings was present. Two days later, a special meeting was held for the announced purpose of reviewing the disaffiliation action taken by the Local. Again, the vote was unanimous to disaffiliate and discontinue payment of dues to the IFLWU. On this occasion an even larger number of members was present.

The reason for the disaffiliation action was described by an officer of the Local as follows: "The reason we decided to disaffiliate with the International Fur & Leather Workers was because Ben Gold [president of IFLWU], in 1950, claimed he resigned from the Communist Party, and our Justice Department claimed he hadn't by arresting Ben Gold. And that was one reason. The second reason, we have no representation from the International Fur & Leather Workers Union." On September 8 a meeting was held at which the director of district 5, IFLWU, urged the members not to leave the IFLWU. According to the same local officer, this meeting was held because the district director "wanted to explain to the men why Ben Gold was arrested." At the meeting questions and remarks were made by one employee concerning Communist domination of the IFLWU.

Thereafter, other special and regular meetings were held by the Local which at that time apparently considered itself no longer affiliated with the IFLWU. At one meeting the members voted to affiliate with the United Shoe Workers, CIO, and to retain, temporarily, the officers which had been elected when Local 310 was affiliated with IFLWU. At a later meeting, the members voted to affiliate with the National CIO rather than the Shoe Workers.

On October 7, 1953, the Petitioner notified the Employer that it represented the Employer's production and maintenance unit and wished to bargain. It stated that this request to bargain superseded all previous requests of any CIO affiliate. The Employer replied that it had an existing contract with Local 310, IFLWU, and declined to recognize the Petitioner because it did not in fact know that the Petitioner represented a majority of employees in the aforesaid unit.

Later in the month, the District director of IFLWU removed the duly elected officers of IFLWU, Local 310, and so advised the Employer. Subsequently, he sent a list of the newly appointed officers and stewards of IFLWU's Local 310 to the Employer.

The Employer stated at the hearing that it continues to recognize Local 310, IFLWU, "bargaining with the officers duly elected in the last election." The persons originally elected officers of Local 310, IFLWU, however, are now temporary officers of the group affiliated with the Petitioner. There has, in fact, been no bargaining since August 25, 1953, and no grievance has been processed since that time. The Employer is holding all monies obtained by checkoff in escrow.

The Board ordinarily does not find that a question concerning representation exists when a collective-bargaining contract is in effect. When, however, the Board finds a schism in the contracting union, it will, as an exception to its contract-bar rule, direct an immediate election to determine the bargaining agent.³ In this case, the Board has examined the facts presented and has reviewed its schism doctrine. The Board concludes that expulsion of a labor union by its parent organization coupled with disaffiliation action at the local level for reasons related to the expulsion, disrupts any established bargaining relationship between an employer and that union and creates such confusion that the existing contract with such union no longer stabilizes industrial relations between the employer and its employees. The circumstances of this case demonstrate such confusion. Where, therefore, a local group disaffiliates from a union expelled by its parent for reasons related to the expulsion, as in this case, the Board will find that a schism exists which warrants directing an immediate election notwithstanding the existence of a contract with the union suffering the schism which would otherwise bar a determination of representative. Accordingly, we find that the contract between the Employer and the Intervenor does not bar this proceeding.⁴

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

4. The parties took no position as to whether or not watchmen should be included in the unit. As they perform guard duties, we find that they are guards and shall exclude them from the unit hereafter found appropriate.

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, including firemen and engineers at the Employer's Ashland, Kentucky, plant, but excluding office employees, checkers, guards, and supervisors as defined in the Act.

³ See Boston Machine Works Company, 89 NLRB 59; cf. Saginaw Furniture Shops, Inc., 97 NLRB 1488; Allied Container Corp., 98 NLRB 580; Mission Appliance Corporation, 104 NLRB 577.

⁴ Board Member Rodgers concurs in the conclusion that the Intervenor's contract should not be considered a bar to these proceedings. He does not agree with the majority, however, that this is necessarily true for the reason stated. Instead, he would refuse to recognize the Intervenor's contract for reasons of broad public policy: The Intervenor has failed to comply with the requirements of Section 9 (h) of the Act by filing non-Communist affidavits of its officers, its parent international, the IFLWU, has previously been expelled from the Congress of Industrial Organizations because of Communist domination, and its International president, Ben Gold, has but recently been found guilty of filing a false affidavit under Section 9 (h) of the Act, on the basis of which this Board has taken steps to withhold from the International further benefits under the Act. Under these circumstances the availability of the Board's processes to the Intervenor would not, in Member Rodgers' opinion, effectuate the policies of the Act (cf. New York Shipping Association 108 NLRB 135) nor properly serve the interests of national security.

5. It appears that District 5, IFLWU, has participated in bargaining for the employees involved. In the case of Safrit Lumber Co., 108 NLRB 550, the Board has found that District 5 is a labor organization which is required to comply with the filing requirements of Section 9 (f), (g), and (h) of the Act. The Intervenor's placement on the ballot is conditioned upon District 5 IFLWU as well as Local 310 IFLWU and IFLWU being in compliance with the filing requirements of the Act. If any one of these organizations fails to meet the requirements, the Intervenor's name will not appear on the ballot.

[Text of Direction of Election omitted from publication.]

Member, Peterson, concurring:

I think it is unnecessary to apply the schism doctrine in this case. It appears to me somewhat strained to hold that the 1950 expulsion of the Intervenor by the CIO bears a causal relationship to the disaffiliation action of the employees in 1953. In this connection, I note that the employees in 1952 were agreeable to having the Intervenor continue as their bargaining representative as evidenced by the current contract negotiated in their behalf. Doubtless the indictment of Ben Gold, the Intervenor's international president, was the proximate cause of the disaffiliation movement. But I question whether that brings the case within the Board's schism doctrine.

However, I concur in the result reached by my colleagues because the contract asserted as a bar is about to expire. The effective date of the automatic renewal clause is less than 30 days away, and the termination date is July 13, 1954.

SAFRIT LUMBER COMPANY, INC. *and* INTERNATIONAL FUR & LEATHER WORKERS UNION OF THE U. S. AND CANADA, Petitioner. Case No. 11-RC-583. April 23, 1954

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 Lewis Wolberg, a hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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

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

¹Chairman Farmer and Member Rodgers concur in the asserting of jurisdiction in this case, but are not to be deemed thereby as agreeing with the Board's past jurisdictional standards as a permanent policy.

In asserting jurisdiction Member Murdock and Peterson rely on Stanislaus Implement and Hardware Company, Ltd., 91 NLRB 618.