and that the essence of the severance requested is therefore the severance of a craft group, then craft principles should control any severance the Board may direct. Accordingly, we would include in the unit for which an election is now directed the four skilled machine operators who work in the casing and shaft departments.

ELECTRICAL PRODUCTS CORPORATION, PETITIONER *and* SHEET METAL WORKERS INTERNATIONAL ASSOCIATION LOCAL NO. 108, AFL[1] *and* LOCAL UNION 1710, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL. *Case No. 21–RM–288. August 20, 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 Leo Fischer, 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 labor organizations involved claim to represent certain employees of the Employer.

3. The Employer seeks a determination of bargaining representatives in a unit of sheet metal workers at its Los Angeles, California, plant. The Sheet Metal Workers moves to dismiss the petition on the ground its current contract with the Employer is a bar to this proceeding. The Employer contends that the contract is not a bar because it was duly terminated after a breach of its terms by the Sheet Metal Workers.

On December 18, 1953, the Employer and the Sheet Metal Workers executed a collective-bargaining contract which was to be operative from July 1, 1953, to April 30, 1955. The contract contains clauses prescribing that all matters of controversy or dispute arising out of the operation of the agreement or affecting the relations between the parties which cannot be settled by the representatives of the Employer and the Sheet Metal Workers directly involved shall be referred to a "Joint Adjustment Board" established by the parties. If this Adjustment Board does not resolve the dispute, it is specified that the dispute shall be referred to a conference of individual representatives designated by the parties. The contract further provides that "*Until such conference is terminated by either representative, there shall be no cessation of work by strike or lockout by either party to this agreement.*"

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[1] Herein referred to as Sheet Metal Workers.

On December 13, 1953, one C. A. Nichols, business manager of the Sheet Metal Workers, stated to Norman Tampsett, the representative of the Employer, that the Employer was breaching the then current contract with the Sheet Metal Workers by allowing persons not members of its union to perform sheet metal work at the Employer's Bakersfield, California, plant. All employees at the Bakersfield plant are represented by Local 428 of the International Brotherhood of Electrical Workers, under a contract which the Employer assumed from a previous owner upon purchasing the Bakersfield plant in 1950, and thereafter annually renewed. The Employer informed Nichols that in its opinion it could not change the existing situation at Bakersfield because of this contract with the IBEW. Without any resolution of the matter, the current contract between the Employer and the Sheet Metal Workers was signed on December 18, 1953. On December 30, pickets appeared at the Bakersfield plant, and on January 4, 1954, Nichols again contacted the Employer and asserted that the Sheet Metal Workers Union wanted its members to perform the sheet metal work at the Bakersfield plant. The Employer again declined to comply with this demand on the ground that it was prevented from doing so by its contract with the IBEW. Thereafter, on January 6 and 11 respectively, the Sheet Metal Workers struck and picketed the Employer's Los Angeles plant, and struck the Employer's Santa Ana, California, plant.

On January 20, 1954, the Employer, in separate telegrams signed by its president, notified both the Sheet Metal Workers Union and its business manager, Nichols, that unless the strikers reported to work not later than 8 a. m. January 22, ". . . we do hereby declare that by reason of your . . . breaches . . . the current collective bargaining agreement . . . is hereby terminated and cancelled." Fifty-two of the sixty sheet metal employees at the Los Angeles plant had not returned to work at the date of the hearing.

On February 12, Local 1710 of the International Brotherhood of Electrical Workers requested recognition by the Employer as bargaining representative of the 60 employees performing sheet metal work at the Los Angeles plant, and the Employer filed the present petition on February 15, naming the Sheet Metal Workers and Local 1710 of the IBEW as claimant unions.

As indicated above, the Employer contends that the Sheet Metal Workers' contract cannot operate as a bar to this proceeding because the Employer terminated the contract after the Sheet Metal Workers' strike in violation of the contract's no-strike clause. In arguing to the contrary, the Sheet Metal Workers assert (1) that the Board does not have jurisdiction to consider the effect of the alleged breach and termination on the contract as a bar, but must assume its existence as a

bar in the absence of a court adjudication that the contract has been legally terminated, and (2) that breaches committed by the Employer prior to the strike left the Sheet Metal Workers legally free to pursue any action it desired, including a strike.

With respect to the first contention, the Board has held that a breach of a no-strike clause, accompanied by a valid notice of termination based thereon, renders a contract ineffective as a bar to a representation proceeding.[2]

The Sheet Metal Workers also contends that the alleged breach of contract by the Employer, in not having the sheet metal work at the Bakersfield plant performed by members of its union, excused any subsequent action it chose to take. We do not agree. Whether or not the Employer had in fact breached the contract in this manner could not relieve the Sheet Metal Workers of its obligation under the contract not to strike until the prescribed procedures for settling the dispute over the alleged breach had been exhausted. It is also urged that the strike was not a breach of the contract because it was initiated only after the Employer had insisted on settlement procedures other than those prescribed in the contract, and had refused a request to submit the controversy for settlement under the contract. The record shows that in the first conversation with the business manager of the Sheet Metal Workers concerning the disputed work at the Bakersfield plant, Tampsett, the Employer's representative, brought up the possibility of a settlement, alluding to "a board of arbitrators, or some similar board." At other times he referred to the possibility of submitting the dispute to a "neutral board," or "an impartial umpire." Thus, it appears that Tampsett's immediate reaction indicated a willingness to adhere to the contract. We deem immaterial the fact that he did not refer to the "Joint Adjustment Board" by its technically correct description. Nor is there any evidence that the Employer ever voiced any disinclination to abide by the contract or that it attempted to prevent the institution of the settlement procedures. Under these circumstances, we conclude that the strike constituted a material breach of the contract, giving the Employer a right to terminate the contract, which it effectively exercised by its telegrams of January 20. Accordingly, as the contract had been effectively terminated, we find that it does not constitute a bar to this proceeding.[3]

A 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.

4. The appropriate unit:

The Sheet Metal Workers contends that the unit of sheet metal employees limited to the Los Angeles plant requested in the petition is

[2] *Moore Drop Forging Company*, 108 NLRB 32.
[3] *Moore Drop Forging Company, supra.*

inappropriate, and that only a multiplant unit of all sheet metal workers at the Los Angeles, Santa Ana, and Bakersfield, California, plants is appropriate.

The Employer is engaged in the manufacture, sale, and installation of neon signs. It maintains 14 plants in California, and 2 in Arizona. For administrative purposes, its plants are divided into a northern division, a central division, and a southern division. The southern division is comprised of the 2 Arizona plants, and 8 of the California plants, including the Los Angeles, Santa Ana, and Bakersfield plants, which are the only plants employing sheet metal workers. As previously indicated the employees at the Bakersfield plant are currently represented by the IBEW. The Sheet Metal Workers has represented the approximately 60 sheet metal employees at the Los Angeles plant for about 10 years. In March 1953, approximately 11 months before the petition herein was filed, the Employer purchased the Santa Ana plant. The Sheet Metal Workers at that time represented the three employees at the Santa Ana plant who were engaged in sheet metal work, under a contract with the prior owner. Without signing a new contract, the Employer thereafter bargained with the Sheet Metal Workers as representative of the employees at the Santa Ana plant.

We do not regard this limited period of bargaining under the specific circumstances of this case as converting the bargaining pattern from a single plant to a multiplant basis. As already indicated, the parties bargained at the Los Angeles plant on a single-plant basis for 10 years. When the Employer purchased the Santa Ana plant, the parties tacitly bargained with respect to the three sheet metal workers at the latter plant without executing a new contract. However, the record shows no clear intent to change the character of the bargaining pattern. Nor can it be said that by these facts there was evinced any desire on the part of the parties not to preserve the single-plant bargaining pattern at the Los Angeles plant, which is involved in the present proceeding, so as to preclude a finding that the single-plant unit sought in the Employer's petition is appropriate.

Accordingly, we find that the following employees constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All employees in the sheet metal department at the Employer's plant at 1100 North Main Street, Los Angeles, California, excluding all other employees, office clerical employees, professional employees, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

MEMBER MURDOCK took no part in the consideration of the above Decision and Direction of Election.