respect to the Petitioner's filing of its representation claim on April 20, 1954, the record discloses that the Employer and the Intervenor commenced negotiations on April 14, 1954. On April 15, after agreement had been reached on all the contractual provisions, the Employer's counsel drafted the contract for signature of the parties. The Employer's counsel and the Intervenor's representative testified at the hearing that an original and a duplicate of the document were formally executed in the offices of the Employer on April 16, and that the Intervenor's representative procured additional copies which he subsequently distributed to the employees for signature. However, the Petitioner produced as a witness an employee who testified that on April 21 he, along with certain other employees, was requested to affix his signature to three copies of the contract, and that at the time he signed the documents the signatures of the contracting parties did not appear thereon.

In view of the foregoing testimony, we are persuaded that the contract in question was in fact executed on April 16, 1954, and that the Petitioner's claim, made on April 20, was not timely. The original contract, introduced into evidence in this proceeding, contained the signatures of the contracting parties alone. A copy of that contract which the Petitioner's witness averred he signed on April 21 was also received in evidence. In our opinion, this witness' testimony that no other signatures appeared on the document which he signed is corroborative of the testimony of the Employer's counsel and the Intervenor's representative that the original document was executed by the parties on April 16, and that copies were later distributed to the employees for their signature. Accordingly, we conclude that the Petitioner's petition, filed on April 21, 1954, is barred by an existing contract between the Employer and the Intervenor. We shall therefore dismiss the petition.

[The Board dismissed the petition.]

MEMBERS MURDOCK and RODGERS took no part in the consideration of the above Decision and Order.

ALEO MANUFACTURING COMPANY *and* TEXTILE WORKERS UNION OF AMERICA, CIO, AND ITS LOCAL 603, TWUA, CIO,[1] PETITIONER *and* UNITED TEXTILE WORKERS OF AMERICA, AND ITS LOCAL UNION 603, UTWA, AFL. *Case No. 11–RC–608. September 13, 1954*

Decision and Order

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Harold X. Summers,

[1] Local 603, TWUA, CIO, was added as party petitioner at the hearing without objection

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 [2] involved claim to represent 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:

In June 1952, Local 603, then bargaining agent for the production and maintenance employees involved herein, disaffiliated from Textile Workers Union of America, CIO, hereinafter referred to as TWUA-CIO, and affiliated with United Textile Workers of America, AFL, hereinafter referred to as UTWA-AFL.[3] The Employer granted recognition to Local 603, UTWA-AFL, and executed a contract effective from June 9, 1952, to June 7, 1953. This contract was amended on March 18, 1953, and extended to June 9, 1955. Thereafter, on March 31, 1953, the parties, together with TWUA-CIO, entered into a consent-election agreement and pursuant thereto an election was held on April 9, 1953, resulting in the certification of UTWA-AFL on May 20, 1953.

On February 19, 1954, the instant petition was filed by TWUA-CIO. The Intervenor, UTWA-AFL and Local 603, UTWA-AFL, contends that the contract and certification are bars to this proceeding. The Employer is continuing to recognize the certified collective-bargaining agent and to honor the contract but maintained a position of neutrality on the issues raised at the hearing. The Petitioner, TWUA-CIO and Local 603, TWUA-CIO, contends, in substance and in the alternative that: (1) Because UTWA-AFL has abandoned its certification to the Local there is no certification bar, and that a schism has occurred in Local 603, UTWA-AFL, leaving the contracting local defunct, thereby removing the contract bar; and (2) this situation is one where a contracting local changed its affiliation from one international union to another, therefore this Local 603 and its petitioning International, TWUA-CIO, should be declared the rightful bargaining agent to administer the current contract without an election.

In December 1953, the South Central Joint Board, which serviced this and several other local unions, was dissolved through actions taken by those locals, and Lawrence Gore, business agent for the Joint

[2] Contrary to the contentions of the Petitioner regarding defunctness, and for the reasons hereinafter stated, we find that Local 603, UTWA, AFL, is a labor organization within the meaning of the Act.

[3] The parties stipulated regarding certain background facts, a portion of which were involved in *Wade Manufacturing Co.*, 100 NLRB 1135

Board, continued to act as business agent for Local 603, UTWA-AFL, apparently without benefit of any official action of the Local and without compensation. On January 10, 1954, Local 603, UTWA-AFL, held a regular monthly meeting. At this meeting, a resolution containing, among other things, a motion [4] directed toward disaffiliation from UTWA-AFL was presented. This resolution had been prepared by Lawrence Gore, and endorsed by 2 of the 7 executive officers and board members.[5] The motion passed by a vote of 34 to 26.[6] Motions to have the resolution posted in the plant before it was voted upon, and to have the resolution posted in the plant after its passage, failed to carry.

On January 11, 1954, Lawrence Gore was suspended as an officer and member of Local 603, UTWA-AFL, and was so notified and advised that the affairs of Local 603, UTWA-AFL, had been placed under the administration of a committee of trustees. By letter dated January 12, 1954, Gore, as business agent for Local 603, informed the Employer that the Local had voted "to handle its own affairs on a local level in every respect." On January 13, 1954, a temporary restraining order was issued by the Superior Court of North Carolina, enjoining Lawrence Gore, and others acting with him, from interfering in the handling and settling of grievances under the contract and prohibiting the dissipation of funds or disposition of properties of Local 603, UTWA-AFL.[7] After January 10, 1954, the group acting with Gore conducted themselves as Local 603, Independent. Their communications and announcements omitted any reference in their title to UTWA-AFL. They appointed temporary officers, committeemen, and stewards to fill the positions of those who refused to go along with the disaffiliation motion at the January 10th meeting; solicited signatures for revocation and reauthorization of dues checkoff cards, and new members; and mailed out literature.

[4] This portion of the resolution read "That we hereby put UTWA-AFL on notice that we do not want any of their representatives to come into our locality, nor to consider themselves as associates of ours, in any way, and from today on, we do not want to be considered a part of UTWA-AFL." This resolution also affirmed Gore as business agent of the Local. According to Gore he was, from that time until February 14, 1954, business agent for Local 603, Independent

[5] The subject matter of the motion had not been presented to the other executive officers in any manner until 5 minutes before the meeting opened. Four of the seven executive officers opposed the motion

[6] The approximately 65 present at this meeting, although greater than the normal attendance of 25 to 30 at regular meetings, was small when compared to approximately 700 employees in the unit Of the 706 employees in the contract unit on December 26, 1953, 583 were having union dues paid by payroll checkoff, and on February 20, 1954, of 696 employees in the unit, 567 maintained checkoff authorizations.

[7] Plaintiffs in this court action were the appointed trustees of Local 603, UTWA-AFL, including the four officers and executive board members who opposed the motion at the January 10, 1954, meeting These individuals sued in their various capacities as individuals, officers, and trustees of Local 603, UTWA-AFL, and as representatives of UTWA-AFL

Meanwhile, the group opposed to the disaffiliation continued to hold activity meetings for Local 603, UTWA-AFL. The trustees appointed other members as officers, committeemen, and shop stewards to fill the vacancies created by the Gore group defection, continued to handle grievances and to use the bulletin board for union notices, etc. On January 21, 1954, a group representing Local 603, UTWA-AFL, together with representatives of the International, UTWA-AFL, met with the Employer to discuss some grievances and arrangements for a pending arbitration matter. At that meeting, they discussed the current disruption in Local 603, UTWA-AFL, and on January 22 the Employer posted on the bulletin board a notice indicating that it would continue to handle grievances under the current contract with Local 603, UTWA-AFL.[8]

On February 8 and 9, 1954, the Gore group distributed a handbill at the gate of the plant announcing, a "regular meeting of Local 603" for February 14, 1954, at the union hall. The handbill listed as matters for discussion "I. Reaffirming our severance of all relations with UTWA-AFL taken January 10, 1954. II. Affiliation with TWUA-CIO. III. Replacements of officers where needed. IV. Regular business." Before February 8 the temporarily established executive board of Local 603, Independent, met to make arrangements for the February 14 meeting. Gore stating that "we were Independent at that time," testified that he knew of no meeting of Local 603, UTWA-AFL, in preparation for the February 14 meeting. The established form for calling meetings for Local 603, UTWA-AFL, was by posting a notice on the bulletin board in the plant. The record does not reveal that the latter procedure was followed in the present case. On February 12, 1954, the Superior Court of North Carolina issued its order continuing the outstanding restraining order and expanding thereon, by among other things, ordering all checkoff funds pursuant to the contract to be deposited with the clerk of the court, and directing the sheriff to lock the union hall.[9] The Gore group then obtained a meeting place in the courthouse. On Saturday, February 13, this change in the meeting place was announced from a sound truck which toured the area where a substantial number of Aleo workers

[8] This notice read as follows: "In order to be legally correct in answering any questions which are being asked, I have consulted with our lawyer as to our position on these matters. The National Labor Relations Board has certified the United Textile Workers of America, A F. of L. as the collective bargaining agent of all Aleo workers in the bargaining unit. The contract is currently in effect between Local 603 affiliated with the United Textile Workers of America, A. F. of L. and the Aleo Manufacturing Company. All grievances will be governed by the machinery of this contract and handled between the representatives of this Union and the Company." The notice was signed by S. A. Black, manager

[9] There is some indication that Manager Black had at Gore's request, and without full knowledge of what had occurred, given the dues checkoff check to Gore shortly after the January 10 meeting, and that some incidents had occurred with respect to the rights of the two groups to use the union hall.

lived. Meanwhile trustees and officers of Local 603, UTWA-AFL, informed those members whom they could reach by word-of-mouth and telephone, that this was not a meeting of the regular Local 603, UTWA-AFL. The record establishes that officials of Local 603, UTWA-AFL, took no part in arranging for the February 14 meeting.

At the February 14, 1954, meeting [10] a resolution to affirm the action taken at the January 10 meeting and to affiliate with TWUA-CIO was passed unanimously. This resolution, like the one presented at the January 10 meeting, was prepared by Gore.[11] Although no check of the membership of those attending the February 14 meeting was made, several of the group testified they regarded all who signed the checkoff cards for the Independent group after the January 10 meeting; all who became members of the Union through this group after that date; and all members of Local 603 prior to January 10 who had indicated they wished to go along with this group and who attended the February 14 meeting, as eligible to vote.

After the February 14 meeting, the Gore group became Local 603, TWUA-CIO. As such, it acquired another building to use as a union hall; opened a new bank account in a bank other than the one maintained by Local 603, UTWA-AFL; solicited some grievances; and sought to participate in arbitration proceedings arranged by the Employer and Local 603, UTWA-AFL.

Local 603, UTWA-AFL, under its trustees and officers, shop stewards, and committeemen, with the assistance of UTWA-AFL representatives, has continued to hold activity meetings, processed and settled grievances with the Employer, carried forward one arbitration matter through a hearing, and has otherwise administered the existing contract. The Employer has received no revocation of dues checkoff authorizations due to the defection. The Employer states that as of April 29, 1954, it continues to recognize the Intervenor as the duly certified bargaining representative and that it will continue to honor the contract then in effect.

TWUA-CIO urges that it was the February 14 meeting which accomplished the disaffiliation of Local 603 from UTWA-AFL, within the Board principles, and that the January 10 meeting was preliminary thereto. We are unable to view the facts in this manner. As brought out by the testimony of Gore and others acting with him, and substantiated by the omission of UTWA-AFL in the title name on their notices and other communications after that date including

[10] Two attendance figures were given for this meeting—one of approximately 200, the other of approximately 118. We find it unnecessary to resolve the discrepancy as neither of these figures is substantial when compared to approximately 700 employees in the unit and approximately 575 union members paying dues through payroll checkoff.

[11] Evidence and testimony was presented with a view to proving that Gore was acting in cooperation with the CIO during this entire period in an attempt to create a schism in Local 603. In view of other circumstances present in this case, we find it unnecessary to consider the weight and effect of such evidence.

the handbill concerning the February 14 meeting, the Gore group regarded themselves after January 10 as Local 603, Independent. The February 14 meeting was called and arranged not by officers of Local 603, UTWA-AFL, or anyone purporting to act on its behalf, but by a group which at the time denied any association with it. It is difficult therefore to comprehend the Petitioner's contention that on February 14 the Gore group purported to take official action for Local 603, UTWA-AFL.

The Board will not accord any validity to a formalized disaffiliation proceeding when a vote is not taken at a meeting of the contracting union.[12] Under the circumstances in this case, the February 14 meeting cannot qualify as one of Local 603, UTWA-AFL.[13] Nor are we able to find that the January 10 meeting warrants the application of the Board's schism doctrine. That meeting was not called or announced as a meeting for the purpose of considering any disaffiliation move, and therefore does not comply with the requirements of formalized action which the Board has held to be a prerequisite of a true schism.[14] On the contrary, it is clear from the continued activity of Local 603, UTWA-AFL,[15] that the disaffiliation expression at the January 10 meeting was merely indicative of a dissident element in the membership, but not of a substantial and effective change in the existence and functioning of the recognized bargaining agent.[16] The circumstances with which we are here concerned are substantially different and clearly distinguishable from those present in the *Wade Manufacturing Company* case.[17] We are unable to agree with our dissenting colleague that the coincidence of this local's participation in 1952 in the action considered in the *Wade* case has any bearing on the events occurring in 1954 presently before us. Accordingly, we find the alleged disaffiliation action did not render the contract ineffective as a bar.[18]

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[12] See *Barton Distilling Company, et al.*, 106 NLRB 361; *G. Mathes Division of Lewin-Mathes Company*, 105 NLRB 911.

[13] See *Mission Appliance Corporation*, 104 NLRB 577.

[14] *The Linde Air Products Company, a Division of Union Carbide and Carbon Corporation, Apparatus Plant No 1*, 107 NLRB 1148.

[15] In view of the facts presented and our conclusion therefrom, we find no merit in the Petitioner's contention that Local 603, UTWA-AFL, is defunct. On the contrary, the record establishes that it is an operating organization actively carrying on the administration of its contract

[16] See *Mission Appliance Corporation*, 104 NLRB 577; *Mario Mercado E Hijos d/b/a Central Rufina*, 105 NLRB 591; *G Mathes Division of Lewin-Mathes Company*, footnote 12, *supra*; cf. *American Factors, Ltd., et al.*, 104 NLRB 199. Also cf. *A. C. Lawrence Leather Company*, 108 NLRB 546.

[17] See background in text and footnote 3, *supra*.

[18] The Petitioner attempted to prove that the UTWA-AFL had abandoned or assigned its certification to its Local 603, UTWA-AFL, and had thereby forfeited its rights under the certification. Although we find no merit in this contention, we do not accept the Intervenor's certification bar contention. Board precedent establishes that evidence of schism is an unusual circumstance justifying the processing of a petition filed within the certification year. See *General Electric Company, Appliance Service Center*, 96 NLRB 566, 567, and cases cited therein.

Similarly, we find no merit in the Petitioner's alternative contention that the contracting union, Local 603, merely changed its affiliation from UTWA-AFL to TWUA-CIO, and that Local 603, TWUA-CIO, should be declared the rightful bargaining agent to administer the current contract. It is apparent from the circumstances stated above that Local 603 did not, as a body, act to change its affiliation with any degree of virtual unanimity.[19]

Under the circumstances, including the continued existence and activity of the Intervenor, we find that there is no confusion as to the identity of the bargaining representative recognized by the Employer.[20] There being no schism or other basis for avoiding the normal consequences of an existing contract, we find that the current contract is a bar to an election at the present time. We shall, accordingly, dismiss the petition.

[The Board dismissed the petition.]

CHAIRMAN FARMER, dissenting:

I dissent from the decision of my colleagues not to direct an election in this proceeding. The circumstances here arise from the same general factual background that was before the Board in *Wade Manufacturing Company, supra*, where the Board found a schism to exist and directed an election upon the petition of the UTWA-AFL. In my opinion, the fact that in the present case the members of Local 603 seeking a return to the TWUA-CIO took the intermediate step of functioning for a while as an independent union—and thus foreclosed the possibility of accomplishing a transfer of affiliation at a meeting of the contracting union—should not be held now to prejudice the right of the Petitioner to seek certification in their behalf. I believe that the Board has not always applied its doctrines relating to schism with such technical strictness, and, as the facts in this case appear to show a substantial confusion in the bargaining relationship between the Employer and its employees, I would direct an election to resolve the issue of representation.

[19] Cf *Charles Beck Machine Corporation*, 107 NLRB 874.

[20] *The Weatherhead Company, Antwerp Division*, 108 NLRB 717. In accord with our usual policy, we do not hereby pass upon the respective rights in the property and assets now being litigated in the courts. See *The Prudential Insurance Company of America*, 106 NLRB 237; *New York Shipbuilding Corporation*, 89 NLRB 915, 916. Furthermore, the pendency of legal proceedings elsewhere does not in our opinion, require a finding that confusion exists as to the identity of the bargaining representative. The Board has held that court litigation concerning the legality of disaffiliation or of property right bears no relationship to the Board's investigation of questions concerning representation of employees. *New York Shipbuilding Corporation, supra*, page 916, footnote 6.