therefore, that the Local is defunct, and that the 1952 contract does not bar this proceeding.

4. In accordance with the agreement of the parties, we find that all production and maintenance employees at the Employer's East Prairie, Missouri, plant, excluding office clerical and professional employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for purposes of collective bargaining.

[Text of Direction of Election omitted from publication.]

WILDING PICTURE PRODUCTIONS, INC. *and* LOCAL UNION 476, STUDIO MECHANICS OF THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, AFL, I.A.T.S.E., Petitioner. Case No. 13-RC-3180. May 7, 1953

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 Jewel G. Maher, 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 [Chairman Herzog and Members Murdock 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 Petitioner and the Intervenor, United Scenic Artists Local Union 350, affiliated with the Brotherhood of Painters, Decorators, and Paperhangers of America, AFL, are labor organizations claiming to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.[1]

[1] The Intervenor moves to dismiss the petition on the ground that this proceeding involves a jurisdictional dispute between two AFL unions. As it does not appear that the dispute could be resolved without resort to the administrative processes of the Act, we shall deny this motion. Pacific Outdoor Advertising Co., 90 NLRB 106.

4. The appropriate unit:

The Petitioner seeks to add scenic designers, set painters and paperhangers, and makeup artists to a unit of studio mechanics consisting of studio electricians, carpenters, property men, and soundmen, which it now represents. The Intervenor opposes the merger of these two groups of employees and contends that only a unit of scenic designers and scenic artists is appropriate. The Employer, on the other hand, asserts that the unit should consist of scenic designers, scenic artists, and set painters and paperhangers, and that makeup artists should be excluded.

The Employer is engaged in the production and sale of motion pictures to industrial concerns. It employs one full-time scenic designer who designs motion-picture sets. His duties entail laying out the set to scale, specifying the size and type of construction, and selecting colors and furniture to be used in erecting and dressing the set.

The Employer also employs a set painter and paperhanger. He does the flat painting and ordinary paperhanging of the set created by the scenic designer. When needed, the Employer hires scenic artists. During the last year, the scenic artists spent about 5 percent of their time sketching, drawing, and painting on muslin, scenes, landscapes, buildings, and adaptations from photographs. This work generally requires artistic ability both as to proportion and color. The remaining 95 percent of their time they perform the same work as the set painter and paperhanger.

The makeup artists administer makeup, beards, mustaches, wigs, and whiskers to the actors and actresses. Generally, they perform their work in a separate makeup room located above the stage, although makeup may sometimes be applied during the filming of a picture.

It is clear that the scenic designer, scenic artists, and the set painter and paperhanger work closely together and have a sufficient community of interests to warrant including them in the same unit for bargaining purposes. However, as makeup artists are primarily concerned with matters other than painting, designing, or decorating sets and usually perform their duties in a different location, we shall, contrary to the Petitioner's request, exclude them from this voting group.

We now turn to the question whether the scenic designer, scenic artists, and the set painter and paperhanger may be added to the studio mechanics unit now represented by the Petitioner. The record discloses that both groups of employees work in close cooperation and proximity to each other in preparing the stage or set for filming. After the scenic designer designs the set, his blueprints are turned over to the carpenters who construct the set according to the blueprint specifications. When the set is erected, the set painter paints or papers it and the scenic artists sketch, draw, and paint the required backdrops, landscapes, or buildings. The property men secure the props and place them in position as required by the scenic designer's plans. The set is then lighted for photographing by the studio electricians. All construction,

wiring, painting, and sketching are performed on the stage. In view of the integrated nature of the work performed by the scenic designer, scenic artists, the set painter and paperhanger, and the studio mechanics, we find that a single overall unit sought by the Petitioner may be appropriate.[2]

On the other hand, there is practically no transfer of employees between the two groups, their work involves different skills, and they have different immediate supervision. Moreover, there is an 11-year history of collective bargaining between the Employer and the Intervenor covering scenic designers and scenic artists.[3] Under these circumstances, we believe that the scenic designer, scenic artists, and the set painter and paperhanger are entitled to separate representation, if they so desire.

Accordingly, we shall direct a self-determination election for the scenic designer, scenic artists, and the set painter and paperhanger.[4] If in such election a majority of these employees vote for the Intervenor, they will be taken to have indicated their desire to constitute a separate appropriate unit and the Regional Director is hereby authorized to issue a certification of representatives to the Intervenor for the unit hereinafter described, which the Board, under such circumstances, finds to be appropriate for purposes of collective bargaining. If, on the other hand, a majority vote for the Petitioner, they will have indicated their desire to become a part of the existing unit represented by the Petitioner, and the Petitioner may bargain for them as part of such unit. In such event, the Regional Director is authorized to issue a certification of results of election to that effect.

The following employees may constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

The scenic designer, scenic artists, and the set painter and paperhanger at the Employer's Chicago, Illinois, studio, excluding all other employees, makeup artists, and supervisors as defined in the Act.

5. The Intervenor requests that employees who are employed by the Employer 2 or more days during the past 9-month period shall be eligible to vote. The Petitioner and the Em-

[2] Transfilm, Incorporated, 100 NLRB 78; KTTV, Inc., 97 NLRB 1477. The Intervenor moves to dismiss the petition on the ground that the Petitioner's request for merger of the two groups of employees in question is based on extent of organization prohibited by Section 9 (c) (5) of the Act. As our findings above are based on other considerations than extent of organization, we find no merit in the Intervenor's contention and shall therefore deny its motion.

[3] It appears that during this period there was no classification of set painter and paperhanger.

[4] The Intervenor contends that Section 9 (c) (3) of the Act prohibits an election in this voting group because a consent election among studio mechanics, which was won by the Petitioner, was held on November 14, 1952. As the election herein directed is not in the unit or subdivision in which the consent election was conducted, this contention is without merit. Cf. Robertson Brothers Department Store, Inc., 95 NLRB 271, 273. The Intervenor's motion to dismiss based on this contention is hereby denied.

ployer request the customary eligibility period. As the record does not disclose any compelling reason for departing from the Board's practice of utilizing the eligibility period prescribed below, the Intervenor's request is hereby denied.

[Text of Direction of Election omitted from publication.]

SOUTHERN PINE ELECTRIC COOPERATIVE *and* LOCAL UNION NO. 676, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL. Case No. 15-CA-440. May 8, 1953

DECISION AND ORDER

On December 30, 1952, Trial Examiner W. Gerard Ryan issued his Intermediate Report in this proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices in violation of Section 8 (a) (1), (3), and (5) of the Act, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner also found that the Respondent had not engaged in certain independent violations of Section 8 (a) (1) of the Act and recommended the dismissal of that portion of the complaint. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following modifications:

1. We agree with the Trial Examiner that the seven complainants did not quit their employment, as contended by the Respondent, but were discharged because of their concerted activity.

As fully described in the Intermediate Report, the seven employees, after being denied a wage increase on January 17, 1952, told the Respondent that they would submit a notice of resignation on the first of the following month, unless their grievance were satisfied. Like the Trial Examiner, we find that such action did not amount to a voluntary termination of employment by the employees, but rather was merely a threat to quit in the future, designed to induce the Respondent to act favorably regarding their wage demand. As such, it constituted concerted activity for their mutual aid and protection, within the meaning of Section 7 of the Act.[1]

[1] Nemec Combustion Engineers, 100 NLRB 1118; see also N. L. R. B. v. Kennametal, Inc., 182 F. 2d 817, enfg. 80 NLRB 1481. Cf. Cresent Wharf and Warehouse et al., 104 NLRB 860, where the employees' conduct was construed on the facts to be a present resignation and hence not protected concerted activity.