

North American Aviation, Inc., Petitioner *and* National Union, United Welders of America, & United Aircraft Welders of America, Local No. 1¹ *and* Allied Welders of America, Local No. 1.² *Case No. 21-RM-323. June 27, 1955*

DECISION AND ORDER

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 employees of the Employer.³
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:

The Employer filed the petition herein on November 15, 1954, stating that it had been presented with conflicting requests by the Unions for recognition as the representative of the welders employed at the Employer's Los Angeles and Downey, California, plants, and supporting plants and facilities located in Los Angeles, California. Local No. 1, affiliated with the National Union, has represented a bargaining unit of the Employer's approximately 200 welders under contracts with the Employer since about 1938. Local No. 1 and the National Union contend that the most recent of these contracts, effective for the period from December 15, 1953, to December 15, 1955, is a bar to a determination of representatives at this time. Allied and the UAW contend that this contract cannot serve as a bar because of an alleged schism in the ranks of Local No. 1.

Prior to the events described below, Local No. 1 had approximately 600 members. In addition to its contract with the Employer, it represented welders under contracts with Northrup Aircraft, Inc., Douglas Aircraft Co., Inc., Hughes Tool Company, and Hughes Air-

¹ Herein referred to as "National Union" and "Local No. 1," respectively

² Herein referred to as "Allied"

³ On January 19, 1955, subsequent to the filing of the petition, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, and its Local 887, herein called UAW, demanded recognition by the Employer as bargaining representative of the employees in the unit in question, and was permitted to intervene at the hearing. Contrary to the contentions raised with respect to their status, we find that National, Local No. 1, and Allied are organizations which admit to membership employees of the Employer, and which exist for the purpose of bargaining with employers concerning wages, hours, and other conditions of employment, and that they are labor organizations within the meaning of the Act

craft Company, all of which are located in the Los Angeles area. In May 1954, shortly after the election of new officers for Local No. 1, difficulties arose between Local No. 1 and the National Union over a number of issues, including alleged inadequacy of the services of the National Union executive secretary, continued use by Local No. 1 of offices occupied jointly with the National Union, and continued payment by Local No. 1 to the National Union of a per capita tax of \$2.50 per month out of the dues of each member of the Local. On or about May 11, 1954, the National Union required Local No. 1 to vacate the office space which they had previously occupied together at 168 N. Hawthorne Boulevard in Los Angeles. On May 13, the executive board of Local No. 1 voted to reduce the monthly per capita tax payments to 25 cents per member, and one Stack, then president of Local No. 1, so notified the National Union by letter dated June 2, 1954. A few days after June 10, 1954, Local No. 1 leased a new office at 5436 Imperial Boulevard, Los Angeles, in its own name, but it continued to hold its meetings at the regular meeting hall at 185 N. Hawthorne Boulevard, across the street from the offices of the National Union.

During July 1954, the National Union and Local No. 1 each demanded that the Employer remit to it directly the dues of Local No. 1 members checked off pursuant to the contract. Faced with two claims to the dues money, the Employer filed an interpleader action in the appropriate local court to have the conflicting claims adjudicated, and the Employer has paid into the registry of the court all dues collected since July 23, 1954. Adjudication in this action was still pending at the time of the hearing herein, but in a separate action by the National Union against Local No. 1, the National Union received judgment on October 28, 1954, for the total of the per capita tax payments withheld by Local No. 1 since May 1, which judgment was partially satisfied out of Local No. 1 funds on October 29.

On October 1, 1954, the executive board of the National Union passed the following resolution, quoted from the minutes of its meeting:

. . . that the National Executive Board expel⁴ Local #1 for nonpayment of per capita tax, as provided for on page 13, article XIV, section 6 of the National Constitution and by laws. The suspension of Local #1 shall not constitute a suspension of individuals or preclude them from fulfilling their obligations to their shops in representing personnel. . . .

⁴ At the next meeting of the executive board on October 29, 1954, the person who made the quoted motion informed the Board that the minutes of the October 1 meeting incorrectly recorded this word as "expel" instead of "suspend." An examination of the section of the constitution and bylaws quoted in the motion reveals that the section contemplates only that a local may be "suspended for non-payment of per capita tax." The appointment of trustees to attend the affairs of Local No. 1 further indicates an intention not to completely sever Local No. 1 from the National Union by an expulsion. We therefore find that Local No. 1 was not expelled from the National Union on October 1, as contended by Allied.

At the same meeting, the executive board elected three trustees to administer the affairs of Local No. 1 during the suspension. The National Union notified the Employer of these actions by letter dated October 4, 1954, and requested the Employer to deal with the trustees as the official representatives of Local No. 1 until further notice. On several occasions during October the trustees attempted to take over the administration of Local No. 1 and to secure access to its records and accounts, but were prevented from doing so by President Stack, Financial Secretary Eckert, and Business Agent Houck, of Local No. 1. Stack wrote to the Employer on October 12, stating that the trustees had been illegally appointed and instructing the Employer to continue to deal with the regular officers of Local No. 1. On October 29, the National Union expelled all officers of Local No. 1 from office and so notified them by letter dated November 1. The Employer was notified of this action by letter of November 3.

On October 31, 1954, Stack, the expelled president of Local No. 1, presided at a meeting in Long Beach, California, of approximately 100 welders from the plants with which Local No. 1 had contracts, at which those present voted unanimously to "form a new organization," which is the organization herein called Allied. The expelled officers of Local No. 1 were elected officers of Allied. The record does not indicate who was responsible for calling this meeting. According to Stack, who presided, and who was elected president of the new organization, leaflets circulated prior to the meeting by an undisclosed source announced the meeting as a "mass meeting" of welders, and the date, time, and place of the meeting. Stack further testified that he and certain "key persons" intended to propose the formation of a "new organization" at this meeting and that this was the sole purpose of the meeting, but he did not recall that the leaflet announcing the meeting advertised any such purpose. No copy of this leaflet is in evidence, and there is therefore no evidence that the purpose of the meeting was advertised beforehand.

The National Union had notified the Employer on October 29, the day Local No. 1's officers were expelled from office, of the "Unions" [sic] desire to discuss wage adjustments. On November 4, Stack notified the Employer on Local No. 1 stationery of the "Unions" [sic] desire to modify the contract. On November 12 and 17 however, Stack demanded recognition as representative of the Employer's welders in the name of Allied. During the period from November 20 to December 5, 128 resignations from membership and revocations of dues checkoff authorizations were submitted to Local No. 1 and to the Employer. At the hearing herein, Allied submitted approximately 170 authorization cards from welders employed by the Employer.

Allied has held additional meetings on December 12, 1954, and February 6, 1955.

In the meantime, however, Local No. 1 held a meeting on November 7, at which there was the normal attendance of about 40 employees, and elected new officers to replace those who had been expelled on October 29. The Employer was then notified of these replacements and of the simultaneous withdrawal of authority from the trustees, and requested to deal with the newly elected officers. The Employer has, since receipt of the claims of Local No. 1 and Allied, processed grievances informally with either representative an employee chooses and has permitted both to use the plant bulletin boards and similar facilities in order to maintain its neutral position.

Although there have been no formal negotiations with the Employer, Local No. 1 executed wage adjustment agreements as amendments to its existing contracts with Northrop Aircraft, Inc., on December 20, 1954, with Hughes Tool Company on February 1, 1955, and with Hughes Aircraft Company on February 4, 1955. On March 4, 1955, Local No. 1 won a consent election in Cases Nos. 21-RC-3802 and 3814 among the welders of Douglas Aircraft Co., in which Allied, UAW-CIO, and International Association of Machinists, AFL, participated.

Upon the basis of the foregoing, and on the record as a whole, we are convinced that the application of the Board's schism doctrine is not warranted in this case. The Board will not accord any validity to a disaffiliation action when the action is not taken at a meeting of the contracting union called or announced for disaffiliation purposes.⁵ Allied contends that this rule should not apply where, as here, the local officers have been previously deprived of the power to call or hold meetings. However, it is not established in the record that the former officers of Local No. 1 were the persons who arranged the October 31 meeting at which Allied was formed. Stack, the former president of Local No. 1, who presided at the October 31 meeting could not recall whether the leaflet announcing the meeting bore any legend or signature indicating the sponsor of the meeting, and testified he had nothing to do with arranging the meeting. It is clear, however, that the meeting was not called by any officer or trustee then functioning on behalf of Local No. 1, nor held under the auspices of Local No. 1. Moreover, as previously indicated, there is no evidence that the meeting was called or announced as a disaffiliation meeting, or as a meeting to form a new organization. The action taken at that meeting therefore does not meet the requirements of formalized action which the Board has held prerequisite to the existence of a true schism.⁶ The continued activity of Local No. 1 since the formation of Allied

⁵ *The Budd Company*, 107 NLRB 116; *Alco Manufacturing Company*, 109 NLRB 1297.

⁶ *Ibid*

indicates that it is an active organization capable of administering its contract.

Under the circumstances, we find that there is no confusion as to the identity of the bargaining representative recognized by the Employer. 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.⁷ We shall, accordingly, dismiss the petition.

[The Board dismissed the petition.]

CHAIRMAN FARMER and MEMBER LEEDOM took no part in the consideration of the above Decision and Order.

⁷ As we find the contract a bar, the UAW-CIO's motion to amend its certification for the production and maintenance employees to include the welders and its motion that the Board conduct a self-determination election are hereby denied

**Remington Rand, Inc., Engineering Research Associates Division
and Local No. 110, International Brotherhood of Electrical
Workers, AFL, Petitioner. Case No. 18-RC-2463. June 27, 1955**

DECISION AND DIRECTION OF ELECTIONS

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Clarence A. Meter, 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.¹

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.

The IAM contends that the IBEW's petition is untimely because it was filed within a 1-year period of a Board certification of representatives. For the reasons stated below, we find no merit in this contention.

On October 1, 1954, after an election directed² by the Board among all of the Employer's production and maintenance employees, the IAM and Teamsters were jointly certified as the exclusive bargaining

¹ District Lodge No 77, International Association of Machinists, AFL, herein called the IAM, and General Drivers Local 120, AFL, herein called the Teamsters, were granted intervention at the hearing

² Case No. 18-RC-2285, decided September 10, 1954 (not reported in printed volumes of Board Decisions and Orders)