

The UMW contends that the "trestle laborers" who work in the coke plant are properly part of its coke plant unit because of the duties performed by these employees, the place in which they work, and because they do not have interests in common with other transportation department employees. The Petitioner contends that the "trestle laborers" here in question are now, and have always been, a part of its bargaining unit. The Employer stated that its position in this proceeding is neutral.

It is apparent from the foregoing, that the "trestle laborers" at the coke plant perform their duties within the boundaries of the coke plant and work with equipment permanently installed there. It is also clear that these employees are sometimes supervised by coke plant supervision. These factors are indicative of their exclusion from the certified unit.

However, there are other factors which, in our opinion, are more persuasive, and which indicate a contrary conclusion. These are: (1) The "trestle laborers" were originally added to the Employer's complement of employees upon the Petitioner's request; (2) the "trestle laborers" are a part of the Employer's transportation department and are carried as such on the payroll; (3) the frequent association of the "trestle laborers" with other employees of the transportation department; (4) the part-time supervision of the "trestle laborers" and the assignment of their work by transportation department personnel; (5) the fact that the duties presently performed by the "trestle laborers" are for the most part an extension of the duties performed in the past by the switchmen, who were within the original certified unit; (6) the fact that transportation department employees, other than "trestle laborers," work in the coke plant and are represented by the Petitioner; and (7) the very important fact that "trestle laborers" are not assigned permanently to the coke plant installation, but instead are rotated as a group between that installation and the furnace plant installation. In view of such factors we are constrained now to hold that the unit placement of the "trestle laborers" is properly within the unit currently represented by the Petitioner.

Westinghouse Electric Corporation and International Union of Electrical, Radio and Machine Workers, AFL-CIO, Petitioner.
Case No. 2-RC-8287. November 26, 1956

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 Clement P. Cull, hearing officer. The hearing officer's rulings made at the hearing are free

from prejudicial error and are hereby affirmed.¹ Upon the entire record in this case,² 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.

The parties agreed that the IUE-AFL-CIO and the UE, Ind., are labor organizations but refused to stipulate similarly as to IUE Local 486 and UE Local 456. As the locals exist, at least in part, for the purpose of dealing with the Employer on matters concerning wages, hours, and working conditions, we find that they are labor organizations within the meaning of the Act.

3. The Intervenor contends that a collective-bargaining contract covering the Employer's hourly paid employees, effective until October 15, 1960, is a bar to this proceeding. The Petitioner claims the contract is not a bar because, among other things, a schism exists within UE Local 456, the contracting union.

The 1955 UE convention resolved, in substance, to rejoin the main body of the American labor movement and to merge with an affiliated union. Thereafter, the leaders of UE District Council 4 became dissatisfied with the efforts of the UE International's officers to carry out the resolution. On May 11, 1956, UE District 4 recommended to all its subordinate locals, including UE Local 456, that they disaffiliate from the UE and affiliate with the IUE. The executive board of UE Local 456 approved the District 4 recommendation on May 13, 1956, and the next day distributed leaflets to its membership announcing that the disaffiliation issue would be considered at the next regular meeting of day-shift employees on May 15. The UE International, on May 14, distributed circulars among members of Local 456 opposing disaffiliation.

At the May 15 meeting the day-shift employees voted 139 to 21 for disaffiliation from the UE and affiliation with the IUE. Thereafter, circulars were distributed to the second- and third-shift employees announcing the result of the day-shift vote and stating that a vote for the second- and third-shift employees on the disaffiliation question would be taken at their next regular meeting. Those workers met on May 16 and decided 53 to 34 against disaffiliation. In ac-

¹ The Intervenor, United Electrical, Radio and Machine Workers of America, Ind., excepted to the hearing officer's quashing of a subpoena addressed to James McLeish, rejection of an offer of proof as to the reasons for the alleged schism in UE Local 456, and denial of a request for the adjournment of the hearing. The hearing officer's rulings all pertained to matters involving the Intervenor International and its District Council #4, not the Intervenor's Local 456. As Local 456 was the direct representative of the Employer's employees and the conduct of the Local 456 membership is decisive of the schism issue involved herein, we find that the hearing officer's rulings were not prejudicial.

² The Intervenor has requested leave to present oral argument before the Board. The Intervenor's motion is hereby denied as the record, including the briefs filed by the parties, adequately presents the issues and positions of the parties.

cordance with established Local 456 procedure the votes of the two meetings were totaled and the disaffiliation motion carried.³ Shortly thereafter the IUE chartered IUE Local 486 for the former members of UE Local 456.

On June 4, 1956, the Petitioner asked the Employer for recognition as the collective-bargaining representative of its hourly paid employees. The Employer has not answered the request and refuses to recognize either union as the representative of its hourly paid employees until the Board decides the issue.

In support of its contention that the UE's existing contract is not a bar because of a schism the Petitioner relies upon the *Lawrence Leather* decision,⁴ in which the Board stated, "Where . . . a local group disaffiliates from a union expelled from its parent for reasons related to the expulsion . . . 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." The Intervenor argues that the *Lawrence Leather* principle is inapplicable to this case, allegedly because the disaffiliation vote by the membership of UE Local 456 was not taken for reasons related to the expulsion of the UE from its former parent, the Congress of Industrial Organizations.

The issue posed therefore is whether the decision to disaffiliate was for reasons related to the UE's expulsion from the CIO in 1949. The CIO's ground for expelling the UE was the alleged Communist domination of that organization. The record herein establishes that the Communist issue was a significant consideration in the disaffiliation vote. Former President Weise of UE Local 456 testified that the executive board meeting of May 13 pinpointed the start of the deterioration of the UE as a labor organization from the time of the CIO expulsion and stated that the executive board relied upon that fact in its recommendation that its locals vote in favor of disaffiliation. The UE International's awareness of communism as a factor in the disaffiliation movement is established by its leaflet distributed the day before the vote. The leaflet noted, among other things, "Under the IUE constitution, the top officials of IUE may throw out local leaders, stewards, convention delegates on charges of 'communism'."

Weise testified further that the disaffiliation vote was affected by the UE's inability to raise funds to support a recent strike or to organize new plants, failures attributable to charges of Communist domination against the UE. He noted "one of the most contributing

³ The Intervenor contends that the vote was invalid because of an alleged procedural irregularity at the May 16 meeting. We reject the Intervenor's claim because, even if true, it is immaterial to the issue of representation. The resolution of such a question is not a function of the Board. *Globe Forge, Inc.*, 115 NLRB 862; *Aluminum Company of America, etc.*, 80 NLRB 1342, footnote 4.

⁴ A *C Lawrence Leather Company*, 108 NLRB 546, 549.

factors" in the UE's failure to recapture its constituent local unions "was the expulsion which took place in 1949, the ensuing red-baiting that took place. . . ." He asserted that the CIO charge of Communist domination against the UE affected the vote by UE Local 456 because the charge "was the start of our trouble." Former President McLeish of UE District 4, present at both disaffiliation meetings, also testified that the charge of Communist domination in the 1949 CIO resolution affected the decision of UE locals within District 4 to transfer their affiliation to the IUE.

In these circumstances we are convinced, contrary to the Intervenor, that the disaffiliation action by the members of UE Local 456 was taken for reasons related to the 1949 expulsion of the UE by its then parent organization, the CIO, and creates such confusion that the existing contract no longer stabilizes industrial relations. We find, therefore, that a schism exists which warrants directing an immediate election. Accordingly, we find that the current contract does not bar this proceeding.⁵

We find that 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 parties agree, and we find, that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act: All hourly paid employees of the Employer at its Jersey City works, 150 Pacific Avenue, Jersey City, New Jersey, including group leaders, but excluding all office, clerical, technical, and professional employees, timekeepers, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

⁵ *Globe Forge, Inc., supra*; *General Electric Apparatus & Service Shop*, 110 NLRB 1054, 1055; *International Harvester Company, East Moline Works*, 108 NLRB 600, 604; *A. C. Lawrence Leather Company, supra*

In view of this finding we do not pass upon the Petitioner's other arguments for finding the Intervenor's contract not a bar

Adams Packing Association, Inc. and Cannery, Citrus Workers, Drivers, Warehousemen and Allied Employees of Local Union 444, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, Petitioner.
Case No. 10-RC-3581. November 26, 1956

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 Allen Sinsheimer, Jr., hearing officer. The hearing officer's rulings made at the hearing are free of prejudicial error and are hereby affirmed.