9. It is not necessary or prudent to rule upon the contention that the ILA pressed demands for coastwide bargaining to such an extent that its conduct, in fact, amounted to bad-faith bargaining within the meaning of Section 8 (b) (3) of the Act.

[Recommendations omitted from publication.]

Adams Coal Company, Inc. *and* Coal, Gasoline, Fuel Oil Teamsters, Chauffeurs, Helpers, Oil Burner Installation, Maintenance Service Men and Helpers Local 553, IBT, AFL–CIO, Petitioner. *Case No. 2–RC–8810. September 30, 1957*

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 Harry F. Knowlton, 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. Enterprise Association, Metal Trades Branch of Local 638, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL–CIO, herein called the Plumbers, asserts that the petition is barred by a contract between it and the Employer, covering the oil burner men and installation men, effective from April 4, 1955, until June 30, 1957, and thereafter until a new contract is executed, absent 60 days' notice of modification or termination given by either party to the other. We find no merit in this contention for, apart from other considerations, the petition herein was filed on April 15, 1957, 15 days prior to the *Mill B* date of contract.

4. The Petitioner seeks an overall unit of truckdrivers, helpers, yardmen, and oil burner installation and servicemen at the Employer's New York City location. The Employer agrees that the unit sought by the Petitioner is appropriate. The Plumbers, however, assert that the appropriate unit is one limited to the oil burner installation and service employees represented by it.

The Employer sells fuel oil and coal. It employs yardmen to load and unload coal and fuel oil, truckdrivers and helpers to deliver these products, and oil burner installation and servicemen to repair oil burners and heating equipment. The oil burner installation and servicemen have different working hours and grievance procedures, are paid on a different payroll, and have somewhat higher skills than yardmen and truckdrivers. In addition, as previously noted, they have been separately represented by the Plumbers since at least 1955.

The plantwide unit sought by the Petitioner may be appropriate for the purposes of collective bargaining. However, it is clear that the oil burner installation and servicemen currently represented by the Plumbers may also constitute an appropriate bargaining unit on the basis of bargaining history [1] and that the remaining unrepresented employees may constitute an appropriate unit on a residual basis.[2] We shall, therefore, make no final unit determination at this time, but shall direct separate elections by secret ballot among the employees in the following two voting groups at the Employer's New York City location, excluding from each office clerical employees, guards, and supervisors as defined in the Act:

Group 1: All oil burner installation and servicemen.

Group 2: All truckdrivers, helpers, and yardmen.

As both labor organizations have an adequate showing of interest among the employees in voting group 1, we shall place the names of both organizations on the ballot in the election among these employees. As it appears that the Plumbers have no showing of interest among the employees in voting group 2, we shall place only the Petitioner's name on the ballot in the election among these employees.

If the plumbers win the election in group 1, or if the Petitioner wins in group 1 or 2 alone, then the employees in group 1 or 2, as the case may be, will be taken to have indicated their desire to constitute a separate unit and the Regional Director conducting the elections directed herein is hereby instructed to issue a certification of representatives to the bargaining agent so selected for such separate unit, which the Board, in the circumstances, finds to be appropriate for purposes of collective bargaining.

If, however, the Petitioner wins the elections in both voting groups,[3] the employees in these groups will be taken to have indicated their desire to constitute a single combined unit and the Regional Director is instructed to issue a certification of representatives to the Petitioner for such combined unit, including therein the employees in both groups 1 and 2, which the Board, in the circumstances finds to be appropriate.

[Text of Direction of Elections omitted from publication.]

MEMBERS MURDOCK and BEAN took no part in the consideration of the above Decision and Direction of Elections.

[1] *Mountain States Bean Company*, 115 NLRB 1208; *Illinois Cities Water Company*, 87 NLRB 109.

[2] *Pollock Paper Corporation*, 115 NLRB 231.

[3] See *Mountain States Bean Company* and *Pollock Paper Corporation, supra*. The technique of "pooling," as adopted in *American Potash & Chemical Corporation*, 107 NLRB 1418, 1427, is inapplicable to a situation such as this, in which it is sought to merge in a single unit a previously unrepresented group and an existing unit. Insofar as it is inconsistent herewith, *Long Electric Sign Co.*, 109 NLRB 770, 772, is hereby overruled.