IT IS FURTHER ORDERED that, in view of the Board's administrative advices, the aforesaid Decision and Direction of Elections be, and it hereby is, amended by striking therefrom paragraph 4 and footnote 3 in their entirety and substituting therefor the following paragraph:

> 4. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act: [3]
>
> All production and maintenance employees at the Employer's East Jordan, Michigan, foundry and machine shop plant, including the truckdrivers, the truck mechanics, and part-time employees,[4] but excluding office clerical employees, plant clerical employees, professional employees, watchmen, guards, foremen, and all other supervisors as defined in the Act.

[3] The Board having been administratively advised that the Intervenor, after timely notification from the Regional Director, has permitted its compliance with Section 9 (g) of the Act to lapse and has failed to renew its compliance under Section 9 (f) of the Act, we hereby deny the Intervenor's request for a separate unit of truckdrivers and find, under the circumstances and in accordance with the alternative request of the Petitioner and the agreement of the Employer, that a unit of production and maintenance employees including the truckdrivers constitutes the appropriate unit.

IT IS FURTHER ORDERED that the aforesaid Direction of Elections be, and it hereby is, amended as follows:

> 1. By striking therefrom the words "in the units found appropriate in paragraph numbered 4, above," and substituting therefor the words "in the unit found appropriate in paragraph numbered 4, above."
>
> 2. By striking therefrom the words "to determine whether or not they desire to be represented for purposes of collective bargaining in Unit A by International Union, Allied Industrial Workers of America, AFL–CIO; and in Unit B by Local 527, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America," and substituting therefor the words "to determine whether or not they desire to be represented for purposes of collective bargaining by International Union, Allied Industrial Workers of America, AFL–CIO."

Wood Wire & Metal Lathers' International Union, Local 46, AFL–CIO *and* Jacobson & Co., Inc. *Case No. 2–CD–126. February 19, 1958*

DECISION AND ORDER QUASHING NOTICE OF HEARING

This proceeding arises under Section 10 (k) of the Act, which provides that "Whenever it is charged that any person has engaged

in an unfair labor practice within the meaning of paragraph (4) (D) of Section 8 (b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen. . . ."

On June 21, 1956, Jacobson & Co., Inc., herein called the Company, filed with the Regional Director of the Second Region a charge against Wood Wire & Metal Lathers' International Union, Local 46, AFL–CIO, herein called Local 46, alleging that Local 46 had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (b) (4) (D) of the Act. The charge alleged, in substance, that Local 46 had engaged in, and had induced and encouraged employees of the Company to engage in, a concerted refusal to work in the course of their employment with an object of forcing or requiring the Company to assign particular work to employees who are members of Local 46, rather than to employees who are members of Local Union 1772, United Brotherhood of Carpenters and Joiners of America, AFL–CIO, herein called Local 1772.

Thereafter, pursuant to Section 10 (k) of the Act and Sections 102.71 and 102.72 of the Board's Rules and Regulations, Series 6, as amended, the Regional Director investigated the charge and provided for a hearing upon due notice to all the parties. The hearing was held on September 24 and 25, 1956, in New York, New York, before Sidney Danielson, hearing officer. The Company and Local 46 appeared at the hearing[1] and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. The rulings of the Trial Examiner made at the hearing are free from prejudicial error and are hereby affirmed.

After the hearing was concluded,[2] the Company and Local 46 filed briefs with the Board. These briefs have been considered by the Board. The Board has also considered in conjunction with this case an *amicus curiae* brief filed by the National Joint Board for Settlement of Jurisdictional Disputes in the *Cleveland Acoustical*[3] case.

Upon the entire record in this case, the Board finds:

1. The Company is engaged in commerce within the meaning of the Act.

2. Local 46 and Local 1772 are labor organizations within the meaning of the Act.

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[1] Local 1772, although served with notice of hearing, did not enter an appearance or participate in the hearing.

[2] On June 12, 1957, the Board denied the General Counsel's motion to remand the proceeding and reopen the hearing.

[3] *Acoustical Contractors Association of Cleveland*, 119 NLRB 1345. On June 13, 1957, the Board ordered the National Joint Board to serve copies of its *amicus* brief in the latter case upon the parties to this proceeding, and provided the parties an opportunity to file a brief in reply thereto.

3. The dispute:

The Facts

In October 1955, the Company was awarded a contract for the installation of acoustical ceilings at the Fern Place School, in Nassau County, Long Island, New York. Aware that this work was the subject of an unsettled dispute between the Lathers' International and the Carpenters International, the Company sought to avoid possible delays in construction by requesting, on April 9, 1956, a decision respecting work assignment from the National Joint Board for the Settlement of Jurisdictional Disputes. Subsequently, in reply to a request from the Joint Board for specific information about the work assignment the Company on April 19, 1957, communicated to the Joint Board its intention of assigning lathers the work of installing furring channels, and assigning carpenters the work of attaching H bars to those channels; but, in the areas where H bars were to be attached to the underside of the bar joists without any furring channels, of assigning to lathers the work of erecting the H bars. The Company also disclosed its intention of assigning carpenters the work of installing the acoustical tiles and related operations. On April 20, the Joint Board requested Lathers' International and Carpenters International to submit to the Joint Board their positions with regard to the work in dispute. Lathers' International did not comply with this request. On May 8, 1956, the Joint Board wired the Company that at a meeting on May 4, 1956: "Joint Board voted that there is no basis for Jacobson to alter contractor's assignment as reported."

Upon receipt of the Joint Board's decision, the Company asked Local 46 if it would abide by the Joint Board's decision. Local 46 refused on the ground that Lathers' International was no longer participating in Joint Board procedures, and therefore the local was not bound by the latter's awards. In this connection, the record herein shows that on February 21, 1955, William J. McSorley, then general president of Lathers' International, issued formal notice to the Joint Board and to a number of contractor associations that Lathers' International and its affiliates "will no longer be a participant in [the Plan for Settling Jurisdictional Disputes] or be bound by any of the Joint Board decisions after March 31, 1955."

The Company began work on the Fern Place School around the middle of May 1956. Sometime after the job began it learned that Local 1772 was demanding that the installation of H bars be performed by carpenters, and was threatening a strike in the event that lathers were assigned this work.

Toward the end of May 1956, the Company's construction superintendent, James Peggie, visited the project and directed Nadler, the lather foreman and a member of Local 46, to proceed with the installation of furring channels. Nadler refused to do the work unless he

was assured that the work of installing the H bars would be done by lathers. A telephone call was then made to Walter Matthews, a business manager of Local 46, during which Superintendent Peggie sought Local 46's consent to the installation of the channels without the H bars. The business manager, however, refused the request. Foreman Nadler then discussed the matter with Frank C. Baumann, Local 46's shop steward on the job, after which both refused to put up the channels unless lathers installed the H bars.[4]

On June 21, 1956, the Company filed the instant Section 8 (b) (4) (D) charge. Thereafter, the General Counsel instituted an injunction proceeding under Section 10 (l), which was set down for hearing on August 16 in United States District Court for the Eastern District of New York. On August 15, Local 46 notified the General Counsel that it would accede to the Company's assignment of the disputed work to carpenters, pending final adjudication of the disputed matter by this Board. As a result, on August 16, when the case was called in the District Court, the General Counsel requested that the injunction proceeding be withdrawn from the calendar, subject to restoration if Local 46 resumed its opposition to the Company's assignment of work. The court granted this request.

On the same day, August 16, 1956, the Company and Local 46 entered into an agreement, to be "in full force and effect as of July 1, 1955," article VI (a) of which provided as follows:

> The employer agrees that all of the work set forth in Section 3 of the L. I. U. Constitution will be contracted for, assigned to and performed by journeymen lathers and apprentices, and that shall be the term and condition of employment under the provisions of this agreement.

The constitutional provision referred to in this agreement—i. e., Section 3 of the constitution of Lathers' International in effect December 1, 1955—sets forth, *inter alia* the installation of H bars as within the International's jurisdiction.

Prior to August 16, the Company had no written contract with Local 46. It did have, however, a bargaining contract with Local 1772, which made no mention of the subject of work assignments, either to carpenters or other employees.

The Fern Place School project was completed on or about September 10, 1956, with carpenters performing the H bar installation.

[4] A short time later, Superintendent Peggie spoke to John Tierney, another business manager of Local 46, about getting the work completed. Tierney refused to change Local 46's position. Several weeks later, Superintendent Peggie again directed Nadler and Baumann to proceed with the installation of the channels to which the H bars were to be attached. Again both refused. Another call was placed to Local 46's office, this time to business manager "Tim" Spillane. When told of the purpose of the call, Spillane told Nadler and Baumann: "We put up the inch-and-a-half and the H bar, or we don't put it up."

Applicability of the Statute

Section 10 (k) of the Act, which empowers and directs the Board to hear and determine disputes out of which Section 8 (b) (4) (D) charges have arisen, also contains mandatory limitations upon the Board's authority to make a determination of dispute in certain circumstances. Thus Section 10 (k) provides in pertinent part

> . . . The Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless . . . the parties to such dispute submit to the Board satisfactory evidence that they have adjusted or agreed upon methods for the voluntary adjustment of the dispute. . . .

In view of the statutory limitation of the Board's authority, it is necessary to determine whether the parties, by reason of their relationship with the National Joint Board for the Settlement of Jurisdictional Disputes, have agreed upon a method for the voluntary adjustment of the dispute here considered.[5] Insofar as the Company is concerned, it appears that it submitted the dispute to the Joint Board in the first instance, thereafter replied to a request from the Joint Board for specific information about the work assignment, and ultimately assigned the work in question in the manner decided by the Joint Board. In these circumstances, we find, in accordance with precedent, that the Company has agreed upon a voluntary method for the adjustment of the dispute herein, namely, Joint Board procedures.[6]

It further appears that Carpenters International was bound, by its membership in the Building and Construction Trades Department, AFL–CIO, which is a signatory to the Plan for Settling Jurisdictional Disputes—the agreement establishing the Joint Board—to accept and comply with decisions of the Joint Board.[7] It follows, and we so find, that Local 1772 was similarly bound.[8]

As for Local 46, in the recently decided *Cleveland Acoustical* case,[9] the Board considered and passed upon the efforts of Lathers' International to dissociate itself from the Plan for Settling Jurisdictional Disputes. The record in that case contained not only the facts set forth above pertaining to such efforts, but others showing that Lath-

[5] See *Manhattan Construction Company, Inc.*, 96 NLRB 1045.
No party to the dispute herein has affirmatively asserted that an "agreed upon method" exists, although Local 46, in its brief, argues that such a "method" does not exist.

[6] *A. W. Lee, Inc.*, 113 NLRB 947, 953.

[7] The record in this proceeding does not contain specific evidence pertaining to Carpenters International's adherence to the Plan establishing the Joint Board. However, we take administrative cognizance of the Plan. See *Acoustical Contractors Association of Cleveland*, 119 NLRB 1345, wherein the Board found that Carpenters International was bound to accept and comply with Joint Board decisions.

[8] See *A. W. Lee, Inc., supra*, at 952.

[9] *Acoustical Contractors Association of Cleveland*, 119 NLRB 1345.

ers' International took additional steps in this direction as well. The Board there held, however, that Lathers' International, by retaining its membership in Building Trades Department, AFL–CIO, "continued to subject itself and its locals to all constitutional requirements of Department membership, including the requirement that it recognize and be bound by the Joint Board agreement which the Department executed on behalf of its affiliates." Applied in this case, the holding in the *Cleveland Acoustical* case is dispositive of the status of Local 46 so far as Joint Board procedures are concerned.

In view of the foregoing, we conclude and find that when the charge herein was filed the parties had agreed upon a method for the voluntary adjustment of the dispute in question. Accordingly, we find that the Board is without authority to determine the dispute, and we shall quash the notice of hearing.

[The Board quashed the notice of hearing.[10]]

MEMBERS BEAN and FANNING took no part in the consideration of the above Decision and Order Quashing Notice of Hearing.

[10] In conformity with the Board's decision in *Acoustical Contractors Association of Cleveland, supra,* the charge herein will not be dismissed but will remain on file in the Regional Office pending final adjustment of the dispute.

J. Tom Moore & Sons, Inc. ***and*** **Talbot Lodge No. 61, International Association of Machinists, AFL–CIO, Petitioner.** *Case No. 32–RC–958. February 19, 1958*

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 Caso March, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

On December 9, 1957, the Board by notice to show cause directed the Employer to show cause in writing why the Board should not assert jurisdiction over the operations of the Employer based on information as to the Employer's commerce as set forth in the appendix attached to said notice. Thereafter, the Employer duly filed an answer to the said notice to show cause in which it objected to the assertion of jurisdiction on the grounds hereinafter discussed.

Upon the entire record in this case the Board finds:

1. The Employer is a Tennessee corporation engaged at Memphis, Tennessee, in the manufacture, sale, and repair of armored trucks and other types of truck bodies. It was stipulated at the hearing that, during the 12 months next preceding the date of the hearing, the