

to a present claim for recognition and that a question of representation has arisen which should be resolved by an election.² The Union's motion to dismiss is therefore denied.

4. The parties stipulated, 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 employees at the Employer's plant in Portland, Oregon, excluding office clerical employees, professional employees, guards, and all supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

² Member Fanning dissents from the majority's finding that the Union's picketing is for immediate recognition. In his opinion, the Union's picketing and related activities were for organizational purposes. He would therefore dismiss the petition.

International Brotherhood of Electrical Workers, Local Union No. 52 and Associated Engineers Inc. and Mechanical Contractors Association of New Jersey Inc. *Cases Nos. 22-CD-7 and 22-CD-8. June 25, 1958*

DECISION AND ORDER QUASHING NOTICE OF HEARING

On August 15, 1957, and various subsequent dates Associated Engineers Inc. and Mechanical Contractors Association of New Jersey Inc. filed charges and amended charges with the Regional Directors for the Second Region and the Twenty-second Region, alleging that International Brotherhood of Electrical Workers, Local Union No. 52, had engaged in and was engaging in certain unfair labor practices within the meaning of Section 8 (b) (4) (D) of the Act.

Thereafter, pursuant to Section 10 (k) of the Act, the Regional Director for the Twenty-second Region investigated the charges and provided for an appropriate hearing upon due notice. The hearing was held at Newark, New Jersey, on various dates from January 13 to March 17, 1958, before Edward F. Ryan, hearing officer. All parties appeared at the hearing 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 hearing officer made at the hearing are free from prejudicial error and are hereby affirmed.¹

Upon the entire record in the case, and upon consideration of the briefs filed by the parties, the Board makes the following:

¹ 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 [Members Rodgers, Bean, and Fanning].

FINDINGS OF FACT

1. Associated Engineers Inc. and Mechanical Contractors Association of New Jersey Inc. are each engaged in commerce within the meaning of the Act.

2. International Brotherhood of Electrical Workers, Local Union No. 52, is a labor organization within the meaning of the Act.

3. In July 1957 Associated was working on a construction project (the Gregory Avenue School) for the Board of Education of West Orange, New Jersey, and decided to use an electric welding machine. Such a machine is customarily installed or "hooked up" to a source of electric power by an electrical contractor. Accordingly, Associated ordered electrical contractor Carl Schultz Inc. to make the hookup. Schultz had an agreement with the Respondent Union, providing in part that the installation of power should be performed by union members (section 15A), and that when maintenance of electric welding machines was "required because of the use of such equipment by any other contractor," the maintenance should likewise be done by union members, in the ratio of not more than six machines per union member (section 15B).

The record here shows that an electric welding machine rarely needs maintenance. When it does, it is not an on-the-spot or field job for even a skilled electrician, but must be returned to the manufacturer. Associated therefore employed no one for the purpose of maintaining the machine. Ray Greeley, the Union's assistant business manager, nevertheless told William Provost, Associated's foreman, that there would be trouble unless section 15B was lived up to and it was agreed to put a standby maintenance man and member of the Union on the machine. The Union's position was corroborated by Joseph Snyder, a long-time journeyman electrician employed by Schultz at the project and a union member; Snyder told Associated that the Union wanted an agreement for a standby maintenance man on the welder before the hookup would be made.

After 11 days the needed hookup had not been made, apparently because no one would agree with the Union to employ a standby maintenance man. On August 6, when Snyder and the other union electrician were on vacation from the job, Associated had its own maintenance man make the hookup, and the welding machine was put into operation. A week later Snyder returned to the job and discovered that the hookup had been made. He thereupon, on August 14, cut or disconnected the hookup and certain other wires, idling employees of Associated (not only the employee who operated the welder but also, briefly, other steamfitters), and Snyder and the other electrician thereupon quit the job. There is no competent evidence that the Union authorized these actions; the testimony is that they merely resulted from personal decisions, and that Schultz acquiesced.

On the next day, August 15, the Board of Education held a meeting of the parties involved, to get the work going again. Louis Vehling, the Union's business manager, stated that the electricians would not return to work and the hookup would not be made until Schultz lived up to its agreement for employment of a standby union member because of the use of an electric welding machine by Associated. Toward the end of the month, the Board of Education agreed to pay for the standby electrician and meet the Union's other demands; the electricians returned and the welding proceeded to completion.

Associated thereupon filed the original 8 (b) (4) (D) charge in this case. On December 9, 1957, the Regional Director issued a notice of 10 (k) hearing, stating that the hearing would be upon "conflicting claims" over the assignment of the work tasks of maintaining electric welding machines. The notice of hearing was not served on any labor organization except the Respondent Union, and no one in fact asserts that there is any work in existence involving so-called "maintenance" of the electric welding machine on the job.

CONTENTIONS OF THE PARTIES

The Charging Parties contend principally that they do not do any maintenance work on the electric welding machines they use, and therefore do not assign such work to any employees at all.² They make no express argument that Section 8 (b) (4) (D) covers the Unions' object of forcing Schultz, or any other employer, to employ an unneeded employee.

The Union contends principally that it was merely seeking to enforce section 15A and B of its contract with Schultz.

APPLICABILITY OF THE STATUTE

As we stated in *Local 450, International Union of Operating Engineers, AFL-CIO (The Austin Company)*, 119 NLRB 135, Section 10 (k) of the Act generally empowers and directs the Board to hear and determine disputes over an employer's assignment of "particular work" to one group of employees rather than to another. However, the Board is not authorized to hear and determine other types of dispute. The present dispute, involving the employment of an employee for work not being done by Associated, clearly does not involve reassignment of any work from one employee to another. It is therefore not the type of dispute which is proscribed under Section 8 (b) (4) (D) and which the Board is authorized to hear and determine under Section 10 (k).

² This fact distinguishes the present case from *Cargill, Inc.*, 108 NLRB 313, cited by the Charging Parties, for there an object of the unions was to force the employer to reassign work he was then doing

We find that, even assuming union responsibility for the work stoppages, the Union did not have a proscribed object within the meaning of Section 8 (b) (4) (D). Accordingly, we find that we are without authority to determine the present dispute, and shall quash the notice of hearing issued in this proceeding.

[The Board quashed the notice of hearing.]

Beth E. Richards d/b/a Freightlines Equipment Company and William R. Bray. *Case No. 4-CA-1508. June 25, 1958*

DECISION AND ORDER

On August 2, 1957, Trial Examiner Ralph Winkler issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not engaged in the unfair labor practices alleged in the complaint and recommending that the complaint be dismissed in its entirety, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the General Counsel filed exceptions and a supporting brief and the Respondent filed a brief in reply.

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 Leedom and Members Rodgers and Bean].

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 the briefs, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner only to the extent consistent herewith.

The Trial Examiner found that the Respondent did not violate Section 8 (a) (3) and (1) of the Act by replacing the Charging Party and 10 other employees named in the complaint with former employees, at the request of Local Union 229, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. In so doing, the Trial Examiner found that the replacement was not based on considerations of union membership or loyalty but on considerations of employment seniority which the Respondent ascertained from its own records. He, therefore, concluded that the replacement did not constitute discrimination which would encourage union membership within the meaning of the Act. As the evidence persuades us that the Respondent replaced the employees in question in order to give their jobs to members of Local 229, we find that the Respondent discriminated against the replaced employees so as to encourage mem-