APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL reimburse all employees at the Nolin River project for all dues, initiation fees, assessments and all other moneys which we have collected from them under checkoff for United Construction Workers, Division of District 50, United Mine Workers of America.

WE WILL make whole Felix Pile for any loss of pay suffered by him as a result of the discrimination against him.

WE WILL NOT encourage membership in United Construction Workers or in any other manner discriminate against employees in regard to their hire or tenure of employment or any term or condition of employment.

WE WILL NOT require employees to be members of, or to sign checkoff cards for, United Construction Workers.

WE WILL NOT assist or contribute support to United Construction Workers or in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist any labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the National Labor Relations Act.

SALTSMAN CONSTRUCTION COMPANY,
Employer.

Dated_____ By_____
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Window Glass Cutters League of America, AFL–CIO *and* Libbey-Owens-Ford Glass Company *and* United Glass and Ceramic Workers of North America, AFL–CIO–CLC

Charleston Local, Window Glass Cutters League of America, AFL–CIO *and* Libbey-Owens-Ford Glass Company *and* United Glass and Ceramic Workers of North America, AFL–CIO–CLC

Shreveport Local, Window Glass Cutters League of America, AFL–CIO *and* Libbey-Owens-Ford Glass Company *and* United Glass and Ceramic Workers of North America, AFL–CIO–CLC

Window Glass Cutters League of America, AFL–CIO, and Its Locals at Mt. Vernon, Ohio, Henryetta, Oklahoma, and Clarksburg, West Virginia *and* Pittsburgh Plate Glass Company *and* United Glass and Ceramic Workers of North America, AFL–CIO–CLC. *Cases Nos. 9–CD–36, 9–CD–37, 9–CD–38, and 9–CD–40. May 15, 1959*

DECISION AND DETERMINATION OF DISPUTE

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 May 12 and 13, 1958, Libbey-Owens-Ford Glass Company, herein called LOF, and Pittsburgh Plate Glass Company, herein called PPG, and both herein jointly called the Companies, filed with the Regional Director for the Ninth Region charges against Window Glass Cutters League of America, AFL–CIO, and its five Locals named above, herein called the League. The charges alleged, in substance, that on May 12, 1958, the League had induced and encouraged employees of the Companies to engage in a strike to force the Companies to assign the work connected with machine glass cutting to employees who were members of the League rather than to employees who were members of United Glass and Ceramic Workers of North America, AFL–CIO, herein called the Glass Workers, in violation of Section 8(b)(4)(D) of the Act.

Thereafter, pursuant to Section 10(k) of the Act and Sections 102.71 and 102.72 of the Board's Rules and Regulations, Series 7, as amended, the Regional Director investigated the charges, and, after consolidating the cases for purposes of hearing, provided for a hearing upon due notice to all parties. The hearing was held before Lloyd R. Fraker, hearing officer, on July 8, 9, and 10, and October 14, 15, 16, 17, 20, and 21, 1958, at Cincinnati, Ohio. 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.[1] The rulings of the hearing officer made at the hearing are free from prejudicial error and are hereby affirmed, except to the extent that the Board by teletype dated August 20, 1958, has already reversed certain rulings of the Trial Examiner upon an interim appeal from such rulings filed by the League on July 18, 1958. All parties filed briefs with the Board, and on February 24, 1959, all parties were permitted to argue orally before the Board in Washington, D.C.

Upon the entire record in these cases, the Board finds:

I. THE BUSINESS OF THE COMPANIES

The parties stipulated, and we find, that each of the Companies has direct inflow in excess of $1,000,000 per annum and direct outflow in excess of $1,000,000 per annum, and that each is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated, and we find, that the League and the Glass Workers are labor organizations within the meaning of the Act.

[1] The Glass Workers was permitted to intervene as a party to the dispute.

III. THE DISPUTE

A. *The Facts*

LOF operates window glass plants at Charleston, West Virginia, and Shreveport, Louisiana. PPG operates window glass plants at Clarksburg, West Virginia, Mt. Vernon, Ohio, and Henryetta, Oklahoma. The League is a craft union of window glass cutters and inspectors,[2] which LOF has recognized as the bargaining representative of the window glass cutters and inspectors at its plants since 1917, and which PPG has recognized with respect to its cutters and inspectors since 1928. Both Companies have recognized the Glass Workers as the bargaining representative of their remaining production and maintenance employees since about 1933, and in 1939 the Glass Workers obtained certifications for such units, excluding the cutters and inspectors.[3] The League has never received a Section 9(c) certification, but pursuant to consent-election agreements with both Companies, the League in 1948 received union-shop authorization certifications for its units. Although the League has always entered into separate contracts with the two Companies, such contracts have been basically the same, and since 1945 the two Companies have bargained jointly with the League.

Prior to 1933, all of the cutting of glass of both Companies was done by a hand-cutting process, which process and the following inspection thereof and cutting of rejects required a high degree of skill obtained after a 3-year apprenticeship. In 1933, LOF started using cutting machines for some of its production, and this partial use of cutting machines for the cutting operation continued until 1958. During this entire 25-year period, the skilled jobs on these machines, *viz*, the machine operators, the diamond men,[4] the inspectors, and the reject cutters, were performed by the cutters; and the League was contractually recognized as the bargaining representative for these jobs.[5] A similar situation was present at PPG, except that PPG did not start using cutting machines until about 1935. As in the hand-cutting process, the production and maintenance employees represented by the Glass Cutters only performed the miscellaneous, unskilled jobs connected with the machines, such as bringing the glass

[2] Inspectors are skilled journeymen cutters.

[3] *Pittsburgh Plate Glass Company*, 10 NLRB 111; *Libbey-Owens-Ford Glass Company*, 10 NLRB 1470.

[4] The early machines cut the glass with a diamond. Later machines cut the glass with a wheel.

[5] In view of the provision in all League contracts since 1933 that "the Company . . . will employ such Cutters in such reasonable numbers as may be required in further development and use of machine cutting," and "cutters so employed shall be paid at their individual hourly rate," we find no merit in the Companies' contention that jurisdiction over machine-cutting jobs was never conceded to the League as a matter of contract right.

to, and removing it from, the cutting tables; and only these jobs were included in the units represented by the Glass Workers. Thus, there is a 25-year, and a 23-year, history of collective bargaining with LOF and PPG, respectively, during which the skilled cutting machine jobs as well as the skilled hand cutting jobs were performed by cutters, and were included in the units represented by the League.

In negotiations on the current April 1958 contract, however, the Companies proposed that all machine cutting jobs be transferred to the production and maintenance units represented by the Glass Workers. The League was strongly opposed to this proposal, and refused to agree to it. As a result of an impasse reached on this issue, the parties agreed not to include the cutting machine jobs in the April 1958 contract, but at the same time entered into a supplemental agreement thereto which first states that both the League and the Glass Cutters claim jurisdiction over the cutting machine jobs, and the Companies claim that these jobs should be in the Glass Workers' unit, and then states that because of the inability of the parties to resolve this issue the jurisdiction of this Board may be invoked to resolve the issue, and the decision of this Board shall be final and binding and no party shall appeal from such decision.

In early May 1958, the Companies decided to increase machine cutting with some new machines, and posted notices of job openings on such machines. The Companies, in line with their position in the contract negotiations, refused to accept applications for these jobs from any members of the League, and assigned all of the jobs to members of the Glass Workers. On May 12, 1958, the Companies began to operate these new machines with members of the Glass Workers; the cutter members of the League struck in protest, with the League claiming that these jobs belonged to it; the machines were immediately closed down; and the cutters then returned to their work. The machines have not been operated since then. The Companies' 8(b)(4)(D) charges herein are based on that strike action.

Finally, the record indicates that the new wheel-cutting machines are basically the same as the early diamond and later wheel machines, just being larger, faster, and more elaborate;[6] that therefore operators, inspectors, and reject cutters on the new machines will need substantially the same skills;[7] and that the chief difference in operating the new machines will be that a "management employee" instead of a cutter will preselect and lay out the cutting to be done on the large "lights" (panes) of glass.

[6] PPG started using a wheel machine in 1940, and LOF in 1947.

[7] The Companies claim that less skill will be required, while the League claims that more skill will be required, for these jobs. The true situation, as indicated by the basic similarity of the new machines to the old, is therefore inferred to be that stated in the text.

B. *Contentions of the Parties*

The Companies contend, in the main, that it was unlawful under Section 8(b)(4)(D) for the League to strike to secure the disputed work, unless the League had a Board certification, or a Board order, or a current contract entitling it to the work, and that the League had none of these. They contend further that the strike cannot be justified on the ground of the past practice and custom with respect to the assignment of the machine-cutting jobs, and that even if such past practice and custom were material there has been no consistent practice in this respect or clear establishment of past contract rights to the work.[8] In support of their primary contention, they point to certain cases in which the Board has said that an employer is free to make work assignments without being subject to strike pressure, unless the employer is failing to conform to an order or certification of the Board, or unless the employer is bound by a current agreement to assign the disputed work to the claiming union.[9] In support of their contention that the League's union shop authorization certification is not a certification within the meaning of Section 8(b)(4)(D), the Companies point to *Baker Ice Machine Company*, 86 NLRB 385, in which the Board held that such a certification is not tantamount to a Section 9(c) certification, to the extent that a union shop authorization election will not bar a Section 9(c) election for 1 year; and LOF further alleges that the union shop authorization unit at LOF does not include machine cutters. In support of its contention that the League had no Board order within the meaning of Section 8(b)(4)(D), LOF asserts that the Board's *dismissal* of cross petitions filed in 1942 by the League and the Glass Workers for the machine cutting jobs at LOF,[10] does not represent such an "order," because such an "order" must, like a certification, *determine* a bargaining representative. In support of their contention that the League had no current contract right to the disputed work, the Companies point to the fact that the current contract does not cover the machine-cutting jobs, and assert that the League thereby bargained away any contract right to those jobs.

The Glass Workers contends, in the main, that the disputed jobs properly belong in its production and maintenance units, because such jobs are now integrated into the production process, and therefore fall within its 1939 certifications for such units.

The League contends, in the main, and in substance, that: (1) the 25-year history of bargaining has given it "representation and bargaining rights" with respect to the disputed jobs which constitute a

[8] But see footnote 5, *supra*.

[9] E.g., *Newark & Essex Plastering Co.*, 121 NLRB 1094; *Bellco Industrial Engineering Co., et al.*, 119 NLRB 59.

[10] *Libbey-Owens-Ford Glass Company*, 41 NLRB 574.

"lawful basis" for its strike action, even though it may not have a current contract right to such jobs; (2) the League's union-shop authorization certification is a certification within the meaning of 8(b)(4)(D) which gives it a right to the disputed work; (3) the 1942 Board decision in the LOF case was a Board order within the meaning of Section 8(b)(4)(D), because in that case the Board "recognized" that the League was the bargaining representative of the employees performing the disputed work; and (4) this is at most the type of case in which the Board makes a unit determination, as in *Winslow Bros. & Smith Co.*, 90 NLRB 1379, and on the basis of the 25-year bargaining history, and the similarity between machine cutting and hand cutting and the similarity between the old machines and the new, the disputed work is properly included in the League's unit.

C. *Applicability of the Statute*

The charges, which were duly investigated by the Regional Director, allege a violation of Section 8(b)(4)(D) of the Act, and the Regional Director was satisfied upon the basis of such investigation that there was reasonable cause to believe that such violation had been committed. Moreover, the record before us establishes that there is reasonable cause to believe that the League induced and encouraged employees of the Companies to strike in order to force or require the Companies to assign machine-cutting jobs to members of the League, although this work had been assigned to, and was being performed by, employees who were members of the Glass Workers. The Board has held that such factual circumstances are sufficient to invoke the Board's jurisdiction to hear and determine a dispute within the meaning of Section 10(k) of the Act.[11] Accordingly, we find that this is a dispute which is properly before us for determination under Section 10(k) of the Act.

D. *The Merits of the Dispute*

We view the dispute here presented, as the parties themselves apparently viewed it in their supplemental agreement to the current contract, as essentially a disagreement between two unions over the question as to which of two existing bargaining units appropriately includes the work in dispute, and therefore as the type of dispute which the Board determines by making the necessary appropriate unit determination.[12]

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[11] *American Broadcasting-Paramount Theatres, Inc.*, 110 NLRB 1233, 1239.

[12] See *Winslow Bros. & Smith Co., supra; Safeway Stores, Incorporated*, 101 NLRB 181; *Equitable Gas Company*, 101 NLRB 425; *National Broadcasting Company Incorporated*, 103 NLRB 479; *Columbia Broadcasting System, Inc.*, 103 NLRB 1256; *American Broadcasting-Paramount Theatres, Inc., supra.*

We disagree with our dissenting colleague, Member Rodgers, that the facts of this case are "strikingly similar" to the facts in *The Lindsay Wire Weaving Company*, 120 NLRB

In support of inclusion of the disputed jobs in the League's unit, there are the following factors: (1) There is a 25-year collective bargaining history of inclusion of the disputed machine cutting jobs in the League's craft unit; and (2) The record indicates that the new machines are basically the same as the old, and that the skills required for such jobs on the new machines will be substantially the same skills as were required on the old machines. In support of inclusion of the disputed jobs in the Glass Workers' unskilled production and maintenance unit, there appears to be only the factor that the new machine operation will be somewhat more integrated time-wise into the overall production process as a result of more streamlining in the machine operation and related operations.[13] On the basis of these factors, we find that the disputed jobs at both Companies of cutting machine operator, reject cutter-machine cut glass, and inspector-machine cut glass, are appropriately included in the units represented by the League.

E. *Determination of Dispute*

On the basis of the foregoing findings, and upon the entire record in this case, the Board makes the following determination of dispute pursuant to Section 10(k) of the Act:

1. The jobs of cutting machine operator, reject cutter-machine cut glass, and inspector-machine cut glass, at the Companies' five window glass plants enumerated above, are appropriately included in the bargaining units presently represented by the League, and not in the bargaining units now represented by the Glass Workers.

977, and therefore do not show the existence of a dispute within the meaning of Section 8(b)(4)(D) and 10(k) of the Act. In the instant case, as stated by Member Rodgers, ". . . the strike must be viewed as a measure taken by the League to protect its historic bargaining status and position," i.e., the League struck against the Companies' attempt to transfer the disputed jobs from the League's bargaining unit to the Glass Workers' bargaining unit. In the *Lindsay Wire* case, however, the Board concluded that there was no jurisdictional dispute, because the dispute between the striking union and the employer was only over the method by which certain work was to be performed, and there was no issue as to whether the striking union was to represent the employees performing such work.

Our dissenting colleague, Member Bean, recognizes that there is a dispute here which requires a determination by the Board under Section 10(k), but he misconstrues the nature of the dispute otherwise. Thus, he states that ". . . the League engaged in a strike against the Companies, with an object of forcing them to assign the skilled work on the cutting machines to it rather than to the employees then performing the work," leaving the impression that all that was involved was the Companies' assignment of certain jobs to one group of employees rather than to another. However, he fails to recognize that the League struck against the Companies' attempt to transfer the disputed jobs from the bargaining unit already represented by the League to the bargaining unit represented by the Glass Workers, and therefore that the essence of the dispute is whether such jobs are still appropriately included in the League's bargaining unit or are now appropriately included in the Glass Workers' bargaining unit. Such a dispute may properly be resolved only by a unit determination, as established by the Board in the cases cited above.

[13] But see *American Potash & Chemical Corporation*, 107 NLRB 1418, 1422, where the Board stated that ". . . the *National Tube* doctrine will not be further extended, and . . . the practice of denying craft severance in industry after industry on the so-called integration of operations theory will not be further followed."

2. Within 10 days from the date of this Decision and Determination of Dispute, the Companies, the Glass Workers, and the League, shall each notify the Regional Director for the Ninth Region, in writing, what steps it has taken to comply with the terms of this Decision and Determination of Dispute.

MEMBER RODGERS, dissenting:

The problem in this case, just as it was in the recently decided *Lindsay Wire* case,[14] is to identify the fundamental dispute between the parties. The facts of this case are strikingly similar to the facts in the *Lindsay Wire* case and do not show, in my opinion, that there exists a dispute within the meaning of Sections 8(b)(4)(D) and 10(k) of the Act.

The facts of this case do show that for some 25 years the Companies have accorded recognition to the League as the bargaining representative of employees performing the Companies' glass-cutting operations. While the recognition accorded the League may not have been couched in terms as explicit as they might have been, it is nevertheless clear that beginning in 1933, and continuing through 1955, the Companies signed labor contracts with the League which gave the League the status of a bargaining representative of employees in the glass-cutting operations.

On October 16, 1957, the Companies wrote the League a letter which appears to be the initial move that precipitated the current dispute. In it the Companies proposed a new labor contract of 1 year's duration which, unlike previous contracts, would contain no language prohibiting or restricting the use of cutting machines, or the way in which the machines were to be manned. This proposal notwithstanding, the Companies, on October 23, 1957, signed a Supplemental Agreement with the League which extended their existing contract until April 25, 1958, and which acknowledged anew the League's status relative to cutting-machine jobs and other cutting jobs.[15]

In April 1958 the Companies and the League were engaged in negotiating a new contract. At issue once again was the operation of the Companies' cutting machines. Various proposals and counterproposals were made. Finally, on April 25, 1958, the Companies and the League signed new 1-year contracts, and simultaneously executed a Supplemental Agreement. The contracts did not include the language of the previous contracts giving the League the status of bargaining representative for cutting machine employees; but the

[14] *The Lindsay Wire Weaving Company*, 120 NLRB 977.

[15] The October 23, 1957, Supplemental Agreement provided in part:

> The parties recognize that the Companies contemplate the introduction of mechanical methods for the cutting of window glass and therefore further agree to meet and discuss and negotiate concerning all problems, including pensions, attendant to the introduction of mechanical means for the cutting of window glass as the employees, represented by the League, may be affected.

Supplemental Agreement clearly contemplated the League's continued claim to that status.[16]

In early May 1958, the Companies posted notices of job openings on cutting machines. The notices contained wage rates determined unilaterally by the Companies. On May 12, the cutting machines were placed in operation with Company-selected personnel not represented by the established bargaining representative, the League. The League immediately struck. It is this strike which the Companies assert is violative of Section 8(b)(4)(D).

In the outlined circumstances, I think that the strike must be viewed as a measure taken by the League to protect its historic bargaining status and position. The League had achieved and maintained that status and position for some 25 years. It did not lose this position, as the Companies assert, when it signed the April 25, 1958, labor contract; the simultaneously executed Supplemental Agreement amply attests to that fact. The Companies' action, on the other hand, which precipitated the strike—the operation of the cutting machines under a unilaterally determined wage scale, accompanied by a displacement of cutting employees represented by the League—was designed to modify and improve production methods, but at the same time directly undermined and attacked the League's bargaining status and position.

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[16] The April 25, 1958, Supplemental Agreement provides in part:

Whereas the Companies are about to put into operation cutting machines for mechanical cutting of window glass;

Whereas the League claims jurisdiction over the occupations of Cutting Machine Operator, Reject Cutter-Machine Cut Glass and Inspector-Machine Cut Glass (referred to herein as the Cutting Machine Occupations);

Whereas the United Glass and Ceramic Workers of North America, AFL–CIO–CLC claims jurisdiction over the Cutting Machine Occupations;

Whereas the position of the Companies is that the Cutting Machine Occupations properly belong in the bargaining unit represented by the United Glass and Ceramic Workers of North America, AFL–CIO–CLC;

Whereas the parties have been unable to resolve the foregoing issues by agreement and the jurisdiction of the National Labor Relations Board may be invoked to resolve the jurisdictional issues;

Now, therefore, in the event the jurisdictional issues are decided by the National Labor Relations Board, the parties agree as follows:

1. Any decision of the National Labor Relations Board as to the union which shall have jurisdiction over the Cutting Machine Occupations shall be final and binding and no party hereto shall appeal from such decision.

2. In the event the National Labor Relations Board shall decide that the League has jurisdiction over one or more of the Cutting Machine Occupations the following procedures are agreed to:

(a) Within ten (10) days after the Board's final decision, the parties will meet in joint session and endeavor to reach agreement on the base rate to be paid on any Cutting Machine Occupation within the League's jurisdiction.

* * * * * * *

(b) The parties recognize that there is at present no procedure in the bargaining unit represented by the League for installing wage incentives on the Cutting Machine Occupations. Accordingly, it is agreed that in the event either Company elects to install wage incentive on any Cutting Machine Occupation within the League's jurisdiction at any window glass plant, such incentive will be installed in accordance with the practices currently being followed at that plant when putting other machine operation on incentives. * * *

Whether the Companies' action constituted an unfair labor practice need not here be decided. It is sufficient to note that the Companies unilateral action, taken in the face of the existing April 1958 Supplemental Agreement, invited retaliatory action if the League were to preserve its bargaining status. Such a strike is not, in my opinion, a jurisdictional strike of the kind contemplated by Section 8(b)(4)(D).[17] Therefore the Board in the circumstances, should make no determination of the so-called "dispute," but should leave the matter to be resolved by the parties through collective bargaining. Accordingly, I would quash the notice of hearing issued in this proceeding.

MEMBER BEAN, dissenting:

The circumstances of this case persuade me to the view that a decision and determination of dispute should issue adverse to the League.

In May 1958 the League engaged in a strike against the Companies, with an object of forcing them to assign the skilled work on the cutting machines to it rather than to the employees then performing the work. I can see no justification in the Act for this *prima facie* violation of Section 8(b)(4)(D). That section should sanction the strike only if the League had a Board order or certification determining it to be the bargaining representative for the employees performing such work. But the League has no such order or certification. I concede that the Board must also consider the provisions of Section 10(k), which would sanction a private adjustment by the Companies and the League, or their agreement on methods for the private adjustment, of the question of assignment of the work. But the League has no such adjustment, either by contract, arbitration award, or otherwise. On the contrary, the League agreed with the Companies that the work should *not* be included in its current contract.

It seems to me that the work dispute which the Board is here charged with determining is the dispute betwen the Companies, which were assigning the work to certain employees, and the League, which struck to get the work assigned to it. To determine now, for the first time, that the work should be put in the League's bargaining unit—a determination with which I would assume the League is entirely willing to comply—or to refuse to make any determination—on the ground that this is not the type of dispute contemplated by Section 8(b)(4)(D) or Section 10(k)—is tantamount to sanctioning the League's strike. I think Congress did not mean that the Board should do this.

Accordingly, I would overrule the cases cited in footnote 12 of the majority opinion, and must note my dissent from the decision reached by the Board majority.

[17] See *The Lindsay Wire Weaving Company, supra; The Mountain States Telephone and Telegraph Company,* 118 NLRB 1104.