

thereby failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work, or unless an employer is bound by an agreement to assign the work in dispute to the claiming union. The Teamsters has no order or certification. Nor does that union have a contract claim to the work. Accordingly, we find that the Teamsters is not entitled, by means proscribed by Section 8(b)(4)(D), to force or require the Employer to assign the disputed work to the Teamsters rather than to the IBEW. However, we are not by this action to be regarded as assigning the work in question to the IBEW.

DETERMINATION OF DISPUTE

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

1. Teamsters, Chauffeurs, Warehousemen and Helpers, Local 386, IBTCWHA (Ind.), and its officers, agents, and representatives, are not, and have not, been entitled, by means proscribed by Section 8(b)(4)(D) of the Act, to force or require John M. King, d/b/a John M. King Co., to assign the work of hauling tower steel and related electrical equipment from the Employer's materials yard to the tower sites to its members rather than to members of Local 684, International Brotherhood of Electrical Workers, AFL-CIO.

2. Within 10 days from the date of this Decision and Determination of Dispute, the Teamsters shall notify the Regional Director for the Twentieth Region in writing, whether or not it will refrain from forcing or requiring John M. King, d/b/a John M. King Co., by means proscribed by Section 8(b)(4)(D) of the Act, to assign the disputed work to its members rather than to members of the IBEW.

Automotive Supply Company, Inc. and Employees Independent Union, Petitioner. *Case No. 13-RD-364. October 23, 1959*

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 Kenneth L. Keith, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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 Bean and Fanning].

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 Petitioner, a labor organization acting on behalf of employees of the Employer, asserts that the Intervenor,¹ which is currently recognized by the Employer as the representative of its employees, is no longer such representative.

3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c) (1) and Section 2(6) and (7) of the Act.

Petitioner herein seeks a decertification election in a unit composed of employees at the Employer's Appleton, Wisconsin, store. Intervenor moved to dismiss the petition as untimely in view of the circumstances discussed below. The Employer is in accord with the Petitioner's request for an election.

On December 17, 1957, the Board ordered the Employer, among other things, to bargain with the Intervenor in a unit substantially the same as that in which an election is sought in the instant case.² On September 8, 1958, the instant petition was filed, but no immediate action was taken thereon by the Regional Director. On May 14, 1959, the Regional Director found that the Employer had complied with the 1957 bargaining order and on June 17, 1959, he wrote to the parties indicating that he had closed the file in the complaint case. The hearing in the instant case was held on August 25, 1959.

At the hearing, the hearing officer refused to permit the Intervenor to introduce evidence that the Employer had continued to refuse to bargain in violation of the Board's 1957 order. The Intervenor contends that this evidence should have been admitted to show that (1) the effect of the Employer's unfair labor practices had not yet been "dissipated," and (2) the instant petition should therefore not be entertained.

The evidence which the Intervenor sought to introduce at the hearing relates to the alleged refusal of the Employer to bargain in good faith with the Intervenor. The Board has a well-established policy that it will not consider evidence of unfair labor practices in a representation proceeding.³ We see no reason to deviate from this policy here, particularly since the Intervenor failed to avail itself of its opportunity to appeal from the Regional Director's finding that the Employer had complied with the Board's 1957 bargaining order.⁴

The question remains whether the petition was untimely because filed so soon after the issuance of the bargaining order that such order

¹ General Drivers and Dairy Employees Union, Local 563, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent.

² *Automotive Supply Co., Inc.*, 119 NLRB 1074. Subsequently, on March 18, 1958, in Case No. 13-RC-5567 (unpublished), the Board, on the petition of Petitioner herein, ordered an election in a unit composed of employees at all stores of the Employer, excluding, however, those employees at the Appleton store who were involved in the complaint case. On April 21, 1958, as a result of such election Petitioner was certified as bargaining agent for such other employees.

³ *Cyclone Sales, Inc.*, 115 NLRB 431.

⁴ *Armco Drainage & Metal Products, Inc.*, 116 NLRB 1260, 1262.

must be deemed to operate as a bar to the petition. In this connection, the Intervenor relied on *Poole Foundry and Machine Company*, Case No. 5-RD-42 (unpublished), discussed in 95 NLRB 34, at 35. In that case, on December 27, 1949, the employer and the union entered into a settlement agreement in which the employer agreed to bargain with the union as representative of its employees. On March 6, 1950, the Regional Director determined that the employer had complied with the settlement agreement and closed the file in the case. On March 9, certain employees of the employer filed a decertification petition, which was dismissed by the Regional Director on April 19. On appeal, the dismissal was upheld by the Board on the ground that the employer and the union were "entitled to a reasonable time within which to effectuate the provisions of the settlement agreement . . . free from rival claims and petitions."

We find the *Poole* case inapposite here. It is true that the Board there, in effect, found that compliance alone was insufficient to remove the settlement agreement as a bar to a rival petition, that it was necessary in addition to show the expiration of a "reasonable period" after the execution of the settlement agreement, and that 2½ months was not such a "reasonable period." However, in the instant case, not only did the Regional Director find that the Employer had complied with the bargaining order, but, in addition, the petition was not filed until about 9 months after the issuance of the bargaining order and no hearing was held thereon until 18 months after the issuance of the order and 3 months after the Regional Director's finding of compliance. Under all the circumstances, we find that a "reasonable period" has elapsed since the Board's 1957 bargaining order, and that it would not effectuate the policies of the Act to deny the employees an opportunity to exercise their franchise in a Board election.⁵

4. The following employees of the Employer constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act: All employees in the shipping department, receiving department, paint department, glass department, machine shop, and repair department in the Employer's Appleton, Wisconsin, store, excluding countermen, outside salesmen, office clerical employees, guards, professionals, and all supervisors as defined in the Act.⁶

[Text of Direction of Election omitted from publication.]

⁵ *Ruffalo's Trucking Service, Inc.*, 114 NLRB 1549; *Armco Drainage & Metal Products, Inc.*, *supra*.

⁶ This unit, as amended at the hearing, is essentially the same as the unit found appropriate by the Board in the 1957 complaint case. The Employer agrees to the above unit. The Intervenor contended at the hearing that this unit might no longer be appropriate in view of the proceedings in Case No. 13-RC-5567, *supra*, footnote 2, and alleged changes in the Employer's operations, the nature of which is not specified in the record. We find no merit in this contention.