

ployer for jurisdictional purposes *Siemons Mailing Service*, 122 NLRB 81 "In these circumstances the relevant criterion in determining the Board's jurisdiction is the combined operations of all the Employers" in the multiemployer association *Belleville Employing Printers*, 122 NLRB 1019

Accordingly, the parties are advised, pursuant to Section 102 103 of the Board's Rules and Regulations, Series 8, as follows:

1 Although the facts as to the Board's legal jurisdiction are controverted, there have been submitted sufficient facts to enable the Board to advise the parties with respect to whether it would assert jurisdiction

2 The Board would assert jurisdiction over labor disputes involving those Respondents who are in commerce or whose operations affect commerce and whose annual gross volume of business is \$500,000 or more

3 The Board would assert jurisdiction over labor disputes involving a multiemployer association or individual members thereof, if the total annual volume of gross business of all the members amounted to \$500,000 or more and legal jurisdiction existed over the association of one or more members thereof

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**Middletown Lumber Company, Petitioner and Local 1477, United Brotherhood of Carpenters and Joiners of America, AFL-CIO.**<sup>1</sup> *Case No 9-RM-223 January 15, 1960*

### 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 Theodore K High, 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 labor organizations involved claim to represent certain employees of the Employer<sup>2</sup>

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

<sup>1</sup> Herein called Local 1477

<sup>2</sup> At the hearing, Middletown Lumber Company Independent Union and Ohio Valley District Council, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, 126 NLRB No 28

The Employer seeks an election among its production and maintenance employees consisting of yard laborers, truckdrivers, and millworkers to determine which of the labor organizations involved herein, if any, is the representative of its employees. District Council asserts that a contract between it and the Employer, executed on July 9, 1958, and effective until June 1, 1960, is a bar to the petition.

The contract urged as a bar recognizes the District Council as the exclusive bargaining representative of all the Employer's "carpenters," and the contract defines "carpenters" as "all employees of the Employer coming within the jurisdiction of the United Brotherhood of Carpenters and Joiners of America."

The Employer, operator of a mill and lumberyard, contends, *inter alia*, that the contract is not a bar because it covers only carpenters employed by the Employer on outside construction projects to the exclusion of the employees in the requested unit. The contract contains wage rates only for journeyman and apprentice carpenters and piledrivers. The Employer hires only carpenters for work on outside construction jobs. Although the contract has been in existence for more than a year it has never been applied to yard and mill employees. The employees at the mill and lumberyard do not work on outside projects. We find that the contract does not encompass the employees sought in the petition. Accordingly, it is not a bar to the proceeding.<sup>3</sup>

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.<sup>4</sup>

All production and maintenance employees at the Employer's Middletown, Ohio, plant, including yard laborers, millworkers, and truckdrivers, but excluding office clerical employees, salesmen, janitors, professional employees, guards, and supervisors as defined in the Act.<sup>5</sup>

[Text of Direction of Election omitted from publication.]

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herein called District Council, were permitted to intervene on the basis of a representative and contract interest respectively. Each denied that the other is a labor organization. The record shows that each exists for the purpose of bargaining on behalf of its members with employers regarding wages, hours, and conditions of employment. We find that each intervenor is a labor organization within the meaning of the Act. *Wyman-Gordon Company, Ingals-Shepard Division*, 117 NLRB 75. After the hearing, Local 1477 and District Council moved to strike the Employer's brief as untimely filed. We deny this motion as the brief was received by the Board within the time prescribed at the hearing. In the brief the Employer points out that the District Council's contract contains a union-security clause and requests the Board to determine whether the contracting union was in compliance with former Section 9(f), (g), and (h) of the Act, presumably so as to entitle the contract to operate as a bar. We are administratively satisfied that both Local 1477 and District Council were in compliance with the filing requirements of the Act within the 12-month period preceding the execution of the contract. However, for reasons stated hereinafter, we find the contract not to be a bar.

<sup>3</sup> Cf. *Appalachian Shale Products Co.*, 121 NLRB 1160, 1164.

<sup>4</sup> The unit finding conforms to a stipulation of the parties.

<sup>5</sup> The parties agreed to exclude Fred Gausman, a janitor, and the following employees who work in the office: C. A. Mangold, Walter Schneider, Walter Henz, Herbert Dalrymple, Ronald Velde, S. H. Blood, Sandy Svarda, Marge Whitt, and Kay Freeze. Accordingly, they are excluded from the unit.