

active interest by an employer is having disputed work done by one group rather than another does not make Sections 10(k) and 8(b)(4)(D) inoperative.³ In short, the fact that Safeway had sound economic reasons for assigning the work to Locals 660 and 639 members, and wanted the work performed by those employees, does not make Safeway ineligible for protection under the Act.

Furthermore, in our view, the above-quoted expression by the Supreme Court complements the well-established principle that, so far as Sections 10(k) and 8(b)(4)(D) are concerned, whether or not the union, or group, to whom the work has been assigned actively asserts a right to the work and opposes the claim of another union or group, is not material.³ It follows that whatever position Locals 660 and 639 may have taken with respect to the work assigned to them is unimportant.

For the foregoing reasons, we would find, as we did in the original Decision, that a dispute within the meaning of Sections 8(b)(4)(D) and 10(k) does exist, and, accordingly, would proceed to determine that dispute.⁴

² See, e.g., *Daniel P. Dooley, Acting Reg. Dtr. v. Highway Truckdrivers and Helpers, Local 107, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Safeway Stores)*, 182 F. Supp. 297 (D.C. Del.), the companion Section 10(1) proceeding, wherein the court enjoined Local 107's conduct. Cf. *International Longshoremen's and Warehousemen's Union, et al. v. Juneau Spruce Corporation*, 189 F. 2d 177, 188 (C.A. 9), aff'd., 342 U.S. 237.

³ *W. J. Hedrick, et al., d/b/a Industrial Painters & Sand Blasters*, 115 NLRB 964, 968; *Tip Top Roofers*, 126 NLRB 1277; *Juneau Spruce Corporation*, 82 NLRB 650.

⁴ In addition, Member Leedom would point out, as he did in the original decision herein, that while he joined in the *Franklin* case, 126 NLRB 1212, in holding that 10(k) was inapplicable where the picketing union was striking to protect its bargaining status and secure the reemployment of discharged employees, he regards the instant situation as distinguishable. Here, the Employer made an administrative change in its method of operations affecting the drivers, represented by Local 107 pursuant to a contract which was to expire on December 31, 1959, but only after unsuccessful efforts to arrange a meeting for the purpose of negotiations, and the Employer coupled the change with an offer to Local 107, which was rejected, to make every attempt to find comparable work for the drivers affected. Moreover, as Crawford's statement made clear, Local 107, unlike the union in the *Franklin* case, was striking to secure the assignment of the work to its members, and was interested only incidentally, if at all, in its representative status and the employment of the displaced drivers. Thus, while Local 107 had theretofore been the bargaining representative of these drivers, the dispute at the time of the picketing was, by reason of the change, one involving the assignment of work. Cf. Member Leedom's dissent in *American Wire Weavers' Protective Association, AFL-CIO, et al (The Lindsay Wire Weaving Company)*, 120 NLRB 977, 986.

Pacific States Steel Corporation and United Steelworkers of America, AFL-CIO, Petitioner. Case No. 20-R-1093. December 15, 1961

THIRD SUPPLEMENTAL DECISION AND ORDER

On August 31, 1944, following a Board-directed election,¹ the Board certified United Steelworkers of America, District 38, CIO, as the

¹ *Pacific States Steel Corporation*, 57 NLRB 1084 and 57 NLRB 1220. 134 NLRB No. 132.

collective-bargaining representative of the Employer's production and maintenance employees. Thereafter, on July 18, 1955, the Board issued a Second Supplemental Decision and Order² clarifying the certification to include three disputed classifications of employees.

On August 15, 1961, the United Steelworkers of America, AFL-CIO, herein called the Steelworkers, filed with the Board a motion to clarify or amend certification of representatives, asking the Board to decide whether the certification of the Steelworkers covers the employees of the recently acquired fabricating division as an accretion to the production and maintenance unit currently represented by the Petitioner.³ Thereafter, the Employer and Operating Engineers Local Union No. 3, International Union of Operating Engineers, AFL-CIO, herein called the Operating Engineers, filed replies to the Petitioner's request, and Local 790, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, herein referred to as Local 790, moved to intervene and filed a memorandum in opposition.

On August 25, 1961, the Board remanded the matter to the Regional Director for the Twentieth Region for the purpose of a hearing to receive evidence on the issues raised by the Petitioner's motion and the opposition thereto. A hearing was held on September 28, 1961, before James A. Harley, 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 National Labor Relations Act, the Board has delegated its powers herein to a three-member panel [Chairman McCulloch and Members Rodgers and Fanning].

Upon the entire record in the case, including the briefs filed by the parties subsequent to the hearing, the Board finds:

Prior to the dispute herein, the Employer's operation at its Niles, California, location consisted of the steel division and the American forge division.

In July 1960, the Employer, by lease and purchase, acquired the reinforcing bar fabricating operation of the F. A. Klinger Company in Stockton, California. In January 1961, the Employer shut down this operation and transferred the machinery and 19 of its 30 employees to Niles, where it became the fabricating division.

The production and maintenance employees in the steel division are represented by the Petitioner. Crane operators in the steel division⁴ and the employees in the American forge division are represented by

² 113 NLRB 222.

³ The Steelworkers specifically indicated that it does not seek an election of representatives for these employees.

⁴ See *Pacific States Steel Corporation*, 121 NLRB 641.

the Operating Engineers. Local 790 or its predecessor has represented the production and maintenance employees of the F. A. Klinger Company since 1956 and the Employer, in January 1961, agreed to be bound by the existing contract between Klinger and Local 790 and recognized Local 790 as the representative of the employees covered by that agreement. In August 1961, the Employer entered into a collective-bargaining agreement with Local 790 covering all the employees in the fabricating division effective until June 1963.

The fabricating division is temporarily located in a separate bay at the Niles site, and when present construction is completed it will continue to be separately located. The sole function of the fabricating division is the bending and shaping of reinforcing bars, herein called rebars, to customer specifications. These rebars are produced by the steel division and account for approximately 30 percent of that division's production. When rebars are needed, the fabricating division orders them through the sales department from the steel division, and they are trucked by the shipping department of the steel division to the fabricating division. None of the shaping or bending is done in the steel division or the American forge division.

There is no interchange of employees or equipment between the various divisions. The employees of each division start and quit work at different times. Employees for the steel division are hired directly by the Employer, while employees in the other divisions are secured through hiring halls. The various divisions are autonomous in regard to hiring, though the personnel manager oversees all hiring. Because each division has a separate collective-bargaining contract, the rates of pay, seniority, vacations, health and welfare and pension funds differ with each division.

The fabricating division maintains its own shipping department where finished products are shipped to its customers, and has a separate estimating department. Clerical work for the fabricating division is performed by a separate staff in the main office building. Each division has a separate profit-and-loss statement, and transactions between the various divisions are treated by means of debits and credits. Though the entire operation is under the supervision of a works manager, his responsibility extends primarily to major policy considerations and the supervision of each division is left to the division production managers.

In view of the fact that the fabricating division has a separate bargaining history, that there is no employee interchange, that it is separately located, that the operation of the steel division is not dependent upon its operation, that the work is entirely different, that there is separate immediate supervision, and that the employees have different

hours, pay, and fringe benefits, we find that the fabricating division is not a functional part of the production and maintenance unit in the steel division, nor an accretion to it.⁵ Accordingly, we deny the Petitioner's motion to amend or clarify its certification.

[The Board denied the motion.]

⁵ See *Chrysler Corporation*, 129 NLRB 407; *Barrett Division, Allied Chemical & Dye Corporation*, 120 NLRB 1026; *Cities Service Refining Corporation*, 121 NLRB 1091.

Herman O. Wunsch and William Smith t/a Atlantic Maintenance Co. and Philadelphia Window Cleaners and Maintenance Workers' Union, Local 125, AFL-CIO. *Case No. 4-CA-2325.*
December 18, 1961

DECISION AND ORDER

On September 1, 1961, Trial Examiner Thomas N. Kessel issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and is engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the Intermediate Report attached hereto. Thereafter, the Respondent filed timely exceptions to the Intermediate Report, and the Charging Party filed exceptions and a statement in support thereof.

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, Fanning, and Brown].

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 entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following modification as to the remedy.

THE REMEDY

The Trial Examiner recommended, *inter alia*, that the Respondent make whole those employees against whom discrimination has been found with the exception of Doris Jones, Belle Ford, and Dudley Riley. As to these individuals, the Trial Examiner found that they rejected the Respondent's offer of employment at a rate of pay lower than union scale, and thereby indicated their unwillingness to work. Contrary to the Trial Examiner, we find that the Respondent's offer