

DETERMINATION OF DISPUTE

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

1. Lathers employed by O. R. Karst, who are represented by Local 88, Wood, Wire and Metal Lathers Union, AFL-CIO, are entitled to perform the work of installing Jackson bars or other nailing bars used in construction of the suspended ceilings on the Saint Rose Hospital project at Hayward, California.

2. United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Local 1622, is not, and has not been, lawfully entitled to force or require O. R. Karst to assign the above work to carpenters.

3. Within 10 days from the date of this Decision and Determination of Dispute, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Local 1622, shall notify the Regional Director for the Twentieth Region, in writing, whether or not it will refrain from forcing or requiring O. R. Karst, by means proscribed by Section 8(b) (4) (D), to assign the work in dispute to carpenters, who are its members, rather than to lathers employed by O. R. Karst, who are represented by Local 88, Wood, Wire and Metal Lathers Union, AFL-CIO.

Wood, Wire & Metal Lathers International Union, Local No. 328, AFL-CIO and Acoustics & Specialties, Inc. and United Brotherhood of Carpenters and Joiners of America, Local Union No. 1340, AFL-CIO. Case No. 27-CD-32. October 29, 1962

DECISION AND ORDER QUASHING NOTICE
OF HEARING

This is a proceeding under Section 10(k) of the Act following charges filed by Acoustics & Specialties, Inc., herein called Acoustics, alleging that Wood, Wire & Metal Lathers International Union, Local No. 328, AFL-CIO, herein called Lathers Union, had threatened, coerced, or restrained Acoustics, with an object of forcing or requiring Acoustics to assign certain work to members of the Lathers Union rather than to Acoustics' own employees who are members of United Brotherhood of Carpenters and Joiners of America, Local Union No. 1340, AFL-CIO, herein called Carpenters Union. A duly scheduled hearing was held before Alvin Lieberman, hearing officer, on November 16, 1961. 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. Acoustics and the Lathers Union filed briefs which have been duly considered.

Upon the entire record, the Board makes the following findings:¹

1. As stipulated by the parties, Acoustics is a Colorado corporation engaged as a contractor in the installation of acoustic materials. It annually receives supplies and materials directly from suppliers and materialmen located outside the State of Colorado valued at more than \$50,000. We find that Acoustics is engaged in commerce within the meaning of the Act and that it will effectuate the policies of the Act to assert jurisdiction herein.

2. The Lathers Union and the Carpenters Union are labor organizations within the meaning of Section 2(5) of the Act.

3. The dispute:

A. The facts

Hensel Phelps Construction Company, hereinafter called Phelps, was the general contractor for the construction of the Student Center Building erected on the campus of Colorado State University, Fort Collins, Colorado. Phelps subcontracted the installation of acoustical ceilings to Acoustics. Included in Acoustics' subcontract was the installation of 1½-inch black iron channel, which is used to hang the frame holding the ceiling acoustical material.

Some 2 weeks prior to August 25, 1961, the date when Acoustics began installing the iron channels, the business agent of the Lathers Union contacted Acoustics to inquire whether the work of installing the channel would be assigned to members of the Lathers Union. Acoustics asked what rate of pay the Lathers would want and was told that since the job was some 50 miles from Cheyenne, Wyoming, the home of the nearest Lathers Union local, Acoustics would have to pay 2 hours travel time per day in addition to the regular hourly rate for lathers. When Acoustics indicated that, although it was willing to employ lathers, it did not wish to pay for travel time and would only pay for actual hours worked, the talks broke down. Thereafter Acoustics asked the Carpenters Union to furnish men to install the channel. These men were furnished; however, the Carpenters Union never claimed that its members were entitled to do the work.

On August 29, 1961, the Lathers Union business agent requested the assistance of the prime contractor, Phelps, in obtaining the work in dispute for lathers. When Phelps' intervention did not produce the desired result, members of the Lathers Union began picketing the project with signs reading: "Acoustics & Specialties, Inc., Unfair to Lathers Local 328, Sub-Standard Wages." As a result of this picket-

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 [Chairman McCulloch and Members Fanning and Brown].

ing there was a general work stoppage on the project. Picketing terminated the same day when Phelps assured the Lathers Union that, pending settlement of the dispute, it would write Acoustics a letter instructing Acoustics to remove employees represented by the Carpenters Union who were performing the disputed work.

Acoustics complied with this instruction from Phelps until September 5, 1961, when employees represented by the Carpenters Union resumed their performance of the disputed work. However, no further picketing of Acoustics resulted.

B. Contentions of the parties

Acoustics contends that under the facts of this case, it is the Employer's right to make an assignment of the disputed work and that so long as that assignment is reasonable, it must be respected.

The Carpenters Union takes no position as to the merits of the dispute, contending merely that, without claiming the right for its members to do the disputed work, it furnished men to perform such work when asked to do so by Acoustics.

The Lathers Union contends that there is no jurisdictional dispute. Rather, it states, in effect, that since there are not two competing employee groups claiming the work, the dispute was purely economic: whether travel time would be paid to men performing the work of installing the iron channels.

C. Applicability of the statute

We are of the opinion that the record in its entirety does not evidence a jurisdictional dispute between competing groups of employees claiming the right to perform the work in dispute and that, therefore, there is no dispute cognizable under Section 10(k) of the Act.

There is no real or substantial evidence that two competing groups of employees are contending for the work of installing 1½-inch black iron channels. Rather, the Carpenters Union, through its attorney at the hearing, indicated that it does not claim that the work of installing such channels is within the jurisdiction of the Carpenters Unions, and that at no time did it request that such work be assigned to its members. This is recognized by Acoustics in its brief wherein it is stated:

The dispute in the present case is not a dispute between the lathers union and the carpenters union as to which one is entitled to do a specific job. It is a dispute between an employer and an uncertified union, which does not represent any of the employees of that employer, as to whether or not the employer can be forced to hire the union's members to perform a specific type of work.

The Board has noted on previous occasions² that implicit in the thrust of the Supreme Court's decision in the *CBS* case³ is the proposition that Sections 8(b) (4) (D) and 10(k) were designed to resolve competing claims between rival groups of employees, and not to arbitrate a dispute between a union and an employer when no such competing claims are involved. Here there are no such competing claims. Accordingly, we find, on the entire record, that the facts herein do not present a jurisdictional dispute within the purview of Sections 8(b) (4) (D) and 10(k) of the Act. We shall therefore quash the notice of hearing.

[The Board quashed the notice of hearing.]

² *Highway Truckdrivers and Helpers, Local 107, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent (Safeway Stores, Incorporated)*, 134 NLRB 1320; *Brotherhood of Teamsters and Auto Truck Drivers, Local 70, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Ind. (Hills Transportation Co.)*, 136 NLRB 1086; *Sheet Metal Workers International Association, Local Union No. 272*; *Sheet Metal Workers International Association, AFL-CIO (Valley Sheet Metal Company)*, 136 NLRB 1402.

³ *N.L.R.B. v. Radio & Television Broadcast Engineers Union Local 1212, International Brotherhood of Electrical Workers, AFL-CIO (Columbia Broadcasting System)*, 364 U.S. 573.

American Metal Products Company and International Union, United Automobile Aircraft and Agricultural Implement Workers of America, UAW, AFL-CIO and its Local No. 1198.¹
Case No. 26-RM-134. October 29, 1962

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 John E. Cienki, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case,² the Board finds:

1. The Petitioner is engaged in commerce within the meaning of the Act.
2. The labor organization involved claims to represent certain employees of the Employer.³

¹ The name of the Union appears as amended at the hearing.

² As the record and briefs adequately present the issues and the positions of the parties, the Union's request for oral argument is denied.

³ During the hearing, the Union refused to stipulate that it is a labor organization within the meaning of the Act. Inasmuch as in 1952 the Union was certified as bargaining agent for the Petitioner's employees in a production and maintenance unit and has engaged in a continuous contractual relationship with the Petitioner until October 1961, we find that the Union constitutes a labor organization within the meaning of Section 2(5) of the Act. The Union also refused to stipulate that it is claiming to be recognized as bargaining agent for the Petitioner's employees on the ground that the Board possesses no jurisdiction in the circumstances of this case to direct an election at this time. We find from the record that during relevant times the Union claims to be recognized as bargaining agent for the Petitioner's production and maintenance employees.