

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 *NLRB 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.

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

4. The Employer-Petitioner operates a plant in Union City, Tennessee, where it is engaged in the manufacture of automotive parts. It seeks an election in a production and maintenance bargaining unit⁴ of its employees. The significant issue in this case concerns strikers' voting eligibility.

In 1952, the Board certified the Union as collective-bargaining agent for employees of the Employer in a production and maintenance unit. Until 1961, the Employer and the Union had a continuous contractual relationship. The most recent labor agreement between the parties was to remain in effect until October 1, 1961, and thereafter from year to year, unless either party served a written notice upon the other requesting modification or termination of the agreement 60 days prior to October 1, 1961, or 60 days prior to any subsequent anniversary date. In July 1961, the parties served notices upon each other indicating their desire to either terminate or modify the agreement. Subsequently they engaged in collective bargaining. On October 1, 1961, the contract expired but the plant operations were continued by mutual agreement.

On November 14, 1961, pursuant to prior notice, the Union struck the plant and commenced picketing.

The strike continued until January 26, 1962, when C. E. Strickland, International representative of the UAW, and L. Bradley, president of Local 1198, UAW, visited the home of the Employer's manager, A. J. Luther. The union representatives delivered a letter to Luther, dated January 26, notifying the Employer that the strike "is terminated" and that "the employees will return to work in the plant immediately, and each striker offers to return to work unconditionally." Thereafter, the picketing ceased.

On January 28 and 29, 1962, the Employer recalled seven striking tool-and-die employees and eight striking maintenance employees. Some 14 of the recalled employees commenced work on January 29. Later, on February 27, the parties met in negotiations and on February 28 the Employer filed the instant petition.

On the night of March 1, 1962, the Union resumed its picketing.⁵ The 14 employees who had been recalled earlier and had reported back to work, did not report to work on March 2; nor did they report to work by the time of the hearing herein on April 2, 1962. When the

⁴ Although the bargaining unit set forth in the RM petition varies in immaterial particulars from that described in article I, section 1, of the parties' last contract, which expired on October 1, 1961, we find from the record that the unit requested by the Petitioner is, in fact, the unit contained in the parties' last contract.

⁵ From November 14, 1961, to January 26, 1962, the Union's picket signs bore the legend "Local 1198 on strike against A.M.P. Company." On and after March 1, 1962, the picket signs were changed to read, "A.M.P. Company unfair to Local 1198."

Union resumed its picketing of the Employer's premises, it did not notify the Employer that the strike was being resumed; nor did it communicate the reasons for the renewed picketing. However, during the hearing C. E. Strickland, UAW International representative, testified that the picketing was recommenced on March 1 in protest against conduct by the Employer which the Union charges to be a continuation of the Employer's unfair labor practices.⁶

Between November 14, 1961, and January 26, 1962, the Employer had permanently replaced some 320 striking production employees, 10 maintenance employees, and 3 tool-and-die employees. There were some 388 employees within the bargaining unit at the commencement of the strike.

Section 9(c) (3), as amended, reads, in pertinent part, as follows:

Employees engaged in an economic strike who are not entitled to reinstatement shall be eligible to vote under such regulations as the Board shall find are consistent with the purposes and provisions of this act in any election conducted within twelve months after the commencement of the strike.

The Employer contends that the Union terminated the strike by its action on January 26, 1962, when it delivered its letter to the Employer announcing the fact of termination and stating that the strikers were unconditionally offering to return to work. Thus, according to the Employer, the strikers who, in the interim had been replaced, lost their eligibility to vote because they ceased to be engaged in an economic strike within the intendment of Section 9(c) (3). We disagree. In this regard, we note that the parties met in an abortive collective-bargaining session on February 27, 1961, after which the Employer filed the instant petition; that the Union still persists in its attempt to cause the General Counsel to prosecute the unfair labor practices alleged in the charges it has filed and appealed; that the Union has continued to pay strike benefits to those members not rehired after January 26 and has resumed the payment of such benefits to the striking tool, die, and maintenance employees who were reemployed in their jobs on January 29, and who again refused to work on and after March 2. Finally, we note that the Union, on and after March 1, has resumed and continued its picketing of the plant.

⁶During the pendency of its labor dispute with the Employer, the Union has filed several charges alleging violations of Section 8(a) (1), (3), and (5) of the Act by the Employer. (Cases Nos. 26-CA-1207, 26-CA-1232, 26-CA-1238, 26-CA-1269, and 26-CA-1277.) All of these charges have been dismissed by the Regional Director and are now on appeal to the General Counsel. We find it unnecessary to defer the issuance of this Decision and Direction pending the disposition of these cases before the General Counsel. *E. J. Lipschutz, Sam Rosenberg, Nathan Lipschutz, Sidney Lipschutz, and Frank Lipschutz, d/b/a Louisville Cap Company*, 120 NLRB 769; *LeRoi Division, Westinghouse Airbrake Co.*, 114 NLRB 893.

In addition, the Union, on October 2, 1962, filed another charge alleging violations of Section 8(a) (1), (3), and (5) in Case No. 26-CA-1387.

In these circumstances, it is evident that the Union has not abandoned its continuing representational interest in the subject bargaining unit and the striking employees continued to have a desire to be so represented. Accordingly, we find that the economic strike⁷ which began on November 14, 1961, was not terminated or abandoned on January 26, 1962, but, insofar as the record shows, has continued to the present.⁸ In view of the foregoing, we find that all replaced strikers who are not entitled to reinstatement are eligible to vote in the election directed herein.⁹

5. We shall direct an immediate election herein despite the fact that there is pending in the Region a charge filed by the Union alleging violations of Section 8(a) (1), (3), and (5) of the Act. We are cognizant of our usual practice of declining to direct an election in the face of unresolved unfair labor practice charges affecting the unit involved in the representation proceeding, especially where violations of Section 8(a) (5) are alleged. Nevertheless, it is well-settled that this practice is a matter which lies within the discretion of the Board as part of its function of determining whether an election will effectuate the policies of the Act. In view of the pendency of the strike which began on November 14, 1961, we deem it desirable to hold the election within the 12-month period of the strike.¹⁰ We find, therefore, that the

⁷ The Board has held that strikers are presumed to be economic strikers unless and until they are found by the Board to be unfair labor practice strikers *Bright Foods, Inc.*, 126 NLRB 553

⁸ *Pacific Tile and Porcelain Company*, 137 NLRB 1358; *Bright Foods, Inc.*, *supra*, footnote 7. Cf. *Canton Sterilized Wiping Cloth Company*, 127 NLRB 1083; *The Martin Bros. Container & Timber Products Corp.*, 127 NLRB 1086. These cases are distinguishable from the instant case in that after the picketing was discontinued the unions engaged in no further activities in support of the strikes and the strikers did not request reinstatement.

⁹ The Employer agreed at the hearing that approximately 53 strikers who had not been recalled and had not been replaced are eligible voters as they have a reasonable expectancy of recall. We concur, and we find that these strikers as well as any other such strikers who have not been replaced are eligible to vote in the election directed herein

With respect to some 16 strikers who were charged in warrants with strike or picket line misconduct, the Employer asserted it would take no position concerning their voting eligibility until such time as these individuals were either convicted or acquitted. As we are unable, on the present record, to determine whether these individuals have forfeited their status as economic strikers for voting purposes by engaging in misconduct rendering them unsuitable for reemployment, we shall permit them to vote subject to challenge. *The Hertner Electric Company*, 115 NLRB 820. See *W. Wilton Wood, Inc.*, 127 NLRB 1675, 1677.

Recalled strikers: The Petitioner recalled seven tool-and-die makers and eight maintenance employees on or about January 28, 1962, and all of these employees except L. K. Pierce reported to work on January 29. Jason Young, one of the eight recalled maintenance employees, left his employment sometime in February 1962. The remaining 13 employees worked through March 1, but failed to report for work the next day. They have been receiving strike benefits from the Union since on or about March 2, 1962. While it is not clear, the Employer appears to contend that because they violated its plant rule calling for discharge when absent without leave for 3 working days, or 24 hours, they are ineligible to vote. We find no merit in this contention. We find that these 13 employees rejoined the strike on or about March 2, and are eligible to vote in the election. As for employees Pierce and Young, we shall permit them to vote subject to challenge.

¹⁰ Section 9(c) (3) of the Act.

direction of an immediate election will effectuate the policies of the Act.¹¹

In directing the election, we do so without prejudice to either party, and shall expressly condition any certification resulting from such election on the determination or determinations we may subsequently make arising out of the pending unfair labor practice cases, and we shall take such action as may be necessary to effectuate the policies of the Act with respect thereto.¹²

We find that all hourly rated production and maintenance employees in the Employer's Union City, Tennessee, plant, *excluding* all management representatives, executive and supervisory employees, foremen, assistant foremen, and any employee who has the right to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend the same, all office and clerical employees, professional employees, timekeepers, and plant protection employees, constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act.¹³

[Text of Direction of Election omitted from publication.]

MEMBER RODGERS took no part in the consideration of the above Decision and Direction of Election.

¹¹ *West-Gate Sun Harbor Company*, 93 NLRB 830; *Columbia Pictures Corporation, et al.*, 81 NLRB 1313, 1314-1315.

¹² *New York Shipping Association and its members*, 107 NLRB 364, 376.

¹³ The appropriate unit appears as is set forth in article I, section 1, of the last agreement between the parties.

General Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 249, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America¹ and Office and Clerical Employees, Local 72, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America,² Petitioner. Case No. 6-RC-3142. October 29, 1962

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Herbert Schutzman, 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, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

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

² The name of the Petitioner appears as amended at the hearing.