

be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act.

CRAIG-BOTETOURT ELECTRIC COOPERATIVE,
Employer.

Dated----- By-----
(Representative) (Title)

NOTE: We will notify the above-named employees if presently serving in the Armed Forces of the United States of their right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces.

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, Sixth Floor, 707 North Calvert Street, Baltimore, Maryland, Telephone No. 752-8460, Extension 2100, if they have any question concerning this notice or compliance with its provisions.

Aerojet-General Corporation and United Missile and Aerospace Technicians, Petitioner. *Case No. 20-RC-5244. September 3, 1963*

DECISION ON REVIEW AND ORDER

On January 9, 1963, the Regional Director for the Twentieth Region issued a Decision and Direction of Election in the above-entitled proceeding. Thereafter, the International Association of Machinists, AFL-CIO, and its Local Lodge 946, herein called the Intervenors or IAM, filed with the Board, in accordance with Section 102.67 of the Board's Rules and Regulations, Series 8, as amended, a timely request for review on the ground, *inter alia*, that a substantial question of law or policy was presented here as to whether an election in this case should be barred because of the Government's intervention in collective-bargaining negotiations between the Employer and IAM, the recognized bargaining agent.¹ The Board, by telegraphic order dated January 30, 1963, granted the request for review and stayed the election.

The Board has considered the entire record² in this case and makes the following findings:

The Employer is a prime contractor of the U.S. Air Force for the development and production of missiles and rockets. IAM was first certified by the Board in a production and maintenance unit at the Employer's original plant in Pasadena in 1944. Since that time the unit has been enlarged pursuant to agreement by the parties or on

¹ As an additional ground for review IAM contended that Petitioner was not a labor organization within the meaning of the Act, because it allegedly is merely a "paper corporation" and lacks the indicia of a labor organization found in certain sections of the Labor-Management Reporting and Disclosure Act of 1959. For the reasons noted in *Alto Plastic Manufacturing Corporation*, 136 NLRB 850, 854; and *Hamilton Brothers Inc.*, 133 NLRB 868, 872, we agree with the Regional Director that these contentions lack merit.

² We deny the Petitioner's request for oral argument because, in our opinion, the record and briefs adequately set forth the positions of the parties.

the basis of representation elections. The last expired contract between Aerojet and IAM was for the period May 28, 1960, through May 27, 1962. Negotiations for a new agreement commenced in March 1962, but as of May 27, 1962, bargaining was still continuing. Accordingly, the old agreement was extended on a day-to-day basis subject to 24-hour notice of termination. Bargaining continued into July.

On July 21, 1962, the Director of the Federal Mediation and Conciliation Service advised the President of the United States that there was a complete stalemate in collective-bargaining negotiations between IAM and the Employer. The President then sent a wire to IAM in which he stated ". . . Major strikes in this industry would substantially delay our vital missile and space programs and would be contrary to the national interest . . ." The President informed IAM that he was appointing a board of distinguished citizens, headed by George W. Taylor, to assist the parties in their negotiations and to make recommendations. IAM then advised the Employer that all strike sanctions would be held in abeyance for 60 days while the Taylor board proceeded with its efforts for an amicable settlement. The board conferred with the parties, and on September 7 announced its findings and recommendations to the President and to the parties. The next day, the Employer formally submitted a contract proposal to the IAM, which in turn submitted it to its membership for ratification. By majority vote of the membership the proposal was rejected on September 30.

Thereafter, IAM gave Aerojet 24 hours' notice, and struck on October 2 for improved contract terms. On the same day, the Secretary of Labor intervened, requested IAM to call off its strike, and asked all parties to appear as soon as possible in Washington, D.C., for further negotiations. On October 4 the parties entered into an interim strike settlement agreement and resumed bargaining at the Office of the Secretary. These negotiations concluded on October 11 with a proposal from the Employer, and IAM agreed to take the proposal to its membership with a recommendation that it be ratified.

The proposed agreement was presented at separate meetings of the Employer's Sacramento and Azusa employees on October 28. The matter was brought to a vote and the new proposal was rejected by a majority of the combined vote of the employees at both plants. During the following week there were at least two more meetings between IAM and the Employer at which further proposals were discussed, but without agreement. On November 6, the Azusa employees accepted without change the proposal that had been rejected on October 28.

On November 7 the Petitioner filed the instant petition, seeking an election only at the Sacramento plant. On November 13 IAM

negotiating committee decided to poll the Sacramento employees by mail on the proposal rejected at the employee meeting of October 28. The proposal, with a minor change,³ was accordingly submitted on November 15 to the Sacramento employees who voted to accept it. On November 24, the Employer and IAM executed for Sacramento the same agreement that the Azusa employees had already ratified on November 6.

The Regional Director concluded that the petition was timely, having been filed after the expiration date of the old agreement and before execution of a new one, and therefore directed an immediate election. In seeking review, IAM argues that the Board should institute a policy in the aerospace industry of not entertaining the petitions of rival unions filed during Federal intervention in the course of collective bargaining between an employer and an incumbent union. The Petitioner in response contends, primarily, that the promulgation of such a rule would deprive the employees of rights guaranteed by Sections 7 and 9 of the Act freely to designate representatives of their own choosing. Although the Petitioner concedes that the Board has authority to suspend these rights in some circumstances, it argues that no exception to existing bar rules is warranted here. The Employer has not expressed its views.

In this case we are faced, as we frequently are, with the problem of weighing and resolving the conflicting interests of maintaining stability in an existing bargaining relationship and of protecting the freedom of employees to change their representatives.⁴

In concluding that the petition was timely filed, the Regional Director in effect ruled the freedom of choice interest paramount in this case. Our view is different. The Regional Director based his conclusion on existing Board precedents spelling out the rules to which the Board normally adheres with respect to the timeliness of representation petitions aimed at unseating an established bargaining agent. These rules, which are designed to strike a proper balance between the two competing interests stated above, are based upon the Board's evaluation of the considerations present in the variety of factual situations that normally come before the Board. But they are not to be regarded as so inflexible in their application as totally to exclude deviation therefrom in situations where extraordinary considerations compel a different result. Cf. *N.L.R.B. v. Libbey-Owens-Ford Glass Company and L-O-F Glass Fibers Company*, 241 F. 2d 831, 836 (C.A. 4).

³ The change concerned the workweek of some 30 employees in the Employer's Nitroplasticizer plant.

⁴ See, e.g., *The Trailer Company of America, et al.*, 51 NLRB 1106

The instant case, we believe, presents such a special situation: it superimposes important considerations relating to national policy upon the considerations the Board is normally called upon to evaluate in determining whether at a given time the need for continuing stability in labor relations outweighs the employees' interest in freedom of choice. Here, after normal negotiations had run their course and the Federal Mediation and Conciliation Service had been unsuccessful in its efforts to bring about a resolution of the contract dispute between IAM and the Employer, the President of the United States and Secretary of Labor found it necessary in the national interest to intervene and to set up special procedures for the resolution of the contract dispute in order to avert the serious damage to the Nation's vital missile and rocket program that a strike would have caused.

The interventions occurred when no question concerning the continued representative status of the IAM had yet been raised. IAM, responding to the needs of the Nation, cooperated with the expressed desire of the President of the United States and the Secretary of Labor to seek a peaceable solution to the dispute, and toward that end it agreed to withhold strike action while intervention was pending. It was not until after the intervention efforts of the Secretary of Labor had succeeded in accomplishing a settlement at the negotiation level, and while IAM was still continuing its efforts to gain employee approval of the settlement, that the petition herein was filed. The contract which was subsequently executed was based on the settlement reached through the procedures sponsored by the Secretary of Labor.

In the particular circumstances of this case, we do not believe it would be in the national interest to direct an election based on the present petition. Administration of the National Labor Relations Act, it must be remembered, is an important, but not the sole, instrument of our national labor policy. Although exclusive jurisdiction over representation matters has been committed to the Board, we do not regard this as a license to carry out our responsibilities with myopic disregard for other important considerations affecting the national interest and well-being.⁵ We have in the past in appropriate situations taken into account and sought to accommodate our proceedings to other instruments of the national labor policy.⁶ We believe that this also is such a situation.

⁵ See *Southern Steamship Company v. N.L.R.B.*, 316 U.S. 31, 47.

⁶ *Spielberg Manufacturing Company*, 112 NLRB 1080, 1082; *International Harvester Company (Indianapolis Works)*, 138 NLRB 923; *The West Indian Co., Ltd.*, 129 NLRB 1203, 1204; *Alus-Chalmers Manufacturing Company*, 50 NLRB 306, 310; *Raley's Inc. d/b/a Raley's Supermarkets*, 143 NLRB 256

For us to hold on the facts of this case that an entertainable question concerning representation was raised by the filing of the petition simply because the settlement reached had not yet been consummated by written agreement, would be to act at cross-purposes with, and possibly impede,⁷ the Government-sponsored procedures that were set up to, and did, maintain industrial peace and stability in the critical defense industry here involved. An election conducted at the present time might also serve to undo the successful efforts of the Secretary of Labor and create uncertainty and unsettled bargaining conditions for an indeterminate time.⁸

If an election were directed on the present petition, it would also serve, in our opinion, to penalize the IAM for having cooperated with the urgent request of the President of the United States and the Secretary of Labor to surrender its rights to strike while Government intervention was effective. But for its no-strike commitment after expiration of the old agreement, the IAM could have been in a position to bring full economic pressure to bear on the Employer in support of its bargaining demands. It is quite possible that the IAM might thereby have hastened a favorable settlement and concluded a contract before the petition was filed. And it may also well be, for all we know, that the IAM might thereby have left itself less vulnerable to those employee dissatisfactions which led to defections to the rival union and the filing of the petition. In assessing the relative weights to be given to the competing interests of stability and freedom of choice, we also take into account that a denial to unions of protection against new representation challenges under circumstances such as are here present may serve to discourage unions in comparable future situations from acceding to Presidential requests to forgo strike action.

For the reasons set out above, we conclude in the particular circumstances of this case that, on balance, the public interest in stability outweighs the employees' interest in freedom of choice, and that it would best effectuate the purposes of the Act here to dismiss the petition.

[The Board dismissed the petition.]

MEMBERS FANNING and JENKINS took no part in the consideration of the above Decision on Review and Order.

⁷Cf. *Midwest Piping & Supply Co., Inc.*, 63 NLRB 1060, 1070.

⁸We have been advised by the Petitioner that if successful in winning the election it seeks, it will be willing to enter into an agreement containing the same terms and conditions as those in IAM's present contract with the Employer. Even if it were to be assumed that we had the power to condition an election on that basis, this would still not meet a basic objection to entertaining a representation petition in the circumstances here present—its unsettling effect on the Government-sponsored negotiations in progress at the time of the filing.