herein was unprotected activity because it was in violation of the collective-bargaining agreement providing for the settlement of disputes exclusively and finally by compulsory arbitration. A decision to the contrary would frustrate the basic policy of national labor legislation which is to promote a peaceful arbitral process as a substitute for an older regime of industrial conflict.[9]

The Trial Examiner concluded, however, that Respondent condoned any breach of contract involved in the walkout. Accepting the Trial Examiner's finding of facts in this regard, we must disagree with his conclusion that such conduct on the part of Respondent's labor relations consultant in demanding that the Union "get those men back to work" warrants a finding of condonation. Condonation necessarily contains the elements of foregiveness and an intention of treating the employees as if their misconduct had not occurred. We find, contrary to the Trial Examiner, no substantial evidence to support a finding of employer condonation here.

In sum, we conclude that Respondent discharged the 16 employees because they engaged in a walkout which was not protected by the Act.[10] Accordingly, we find that Respondent did not thereby violate Section 8(a)(3) and (1) of the Act.

[The Board dismissed the deferred Section 8(a)(3) and 8(a)(1) allegations of the complaint.]

[9] See *United Steelworkers* v. *Warrior & Gulf Nav. Co.*, 363 U S. 574.

[10] In view of our conclusion that Respondent did not violate the Act in discharging its employees for engaging in an unprotected walkout, it follows that the threat to discharge them for participating in such activity did not violate Section 8(a)(1) of the Act. Accordingly, we dismiss the remaining Section 8(a)(1) allegations in the complaint See *Dubo Manufacturing Corporation*, 142 NLRB 812, footnote 3

On February 25, 1963, the Respondent filed a motion to consolidate the instant cases with Case No 8–CA–2882, and that the Board consider the records of the three cases as a whole and render its decision accordingly. Subsequent to the issuance of the Decision and Order of May 17, 1963, disposing of the 8(a)(5) and (1) allegations in this proceeding, the Respondent renewed its motion to consolidate, and requested that the complaints be dismissed in their entirety. As it appears that the complaint in Case No 8–CA–2882 alleges new unfair labor practices which may properly be litigated in that case, the motions to consolidate are hereby denied. See *General Tire and Rubber Company*, 135 NLRB 269.

Wood, Wire, and Metal Lathers International Union, Local No. 238, AFL–CIO *and* Fiberglas Engineering & Supply Division, Owens-Corning Fiberglas Corporation. *Case No. 28–CD–54. September 16, 1964*

DECISION AND DETERMINATION OF DISPUTE

This is a proceeding pursuant to Section 10(k) of the Act following charges under Section 8(b)(4)(D) of the Act filed by Fiberglas

Engineering & Supply Division, Owens-Corning Fiberglas Corporation (herein called Fiberglas or the Employer), alleging that Wood, Wire, and Metal Lathers International Union, Local No. 238, AFL–CIO (herein called Lathers) had induced and encouraged employees to strike for the purpose of forcing or requiring Fiberglas to assign particular work to members of Lathers rather than to members of United Brotherhood of Carpenters and Joiners of America, Local No. 1319, AFL–CIO (herein called Carpenters). A hearing was held before Hearing Officer Fred W. Davis, on June 3, 4, and 5, 1964. 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. Fiberglas, Lathers, and Carpenters filed briefs which have been duly considered.[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 Jenkins].

Upon the entire record in this case, the Board makes the following findings:

1. The parties stipulated, and we find, that the Employer is engaged in commerce within the meaning of the Act.

2. The parties stipulated, and we find, that Lathers and Carpenters are labor organizations within the meaning of the Act.

3. The dispute:

A. *The Work in Issue*

Nailing channel is used in the construction of acoustical tile ceilings. The work here in dispute is the installation of nailing channel for the application of gypsum board backing for acoustical tile.

B. *The Basic Facts*

Fiberglas, a contractor licensed by the State of New Mexico, is engaged, *inter alia*, in the installation of acoustical tile ceilings. This case involves a Fiberglas subcontract under Hegeman-Harris Co., Inc., the general contractor, to install the acoustical tile ceiling at the Federal Office Building being constructed at Albuquerque, New Mexico.

[1] Fiberglas' request for oral argument is hereby denied, as the record and briefs adequately present the issues and the positions of the parties.

At the hearing Lathers filed a document which included a motion to quash, a motion to dismiss, and an answer, all of which have been incorporated into the record. For reasons appearing hereinafter the motions are denied.

In early May 1964 construction of the building had progressed to the point where Fiberglas could begin installation of the acoustical ceilings. Fiberglas, on an experimental basis, had Bill Carroll, another subcontractor on this project, install the nailing channel on the second floor of the building. Carroll could not meet the cost estimates established by Fiberglas, and by mutual agreement, he discontinued this operation and Fiberglas undertook the installation of the nailing channel.

On Friday, May 8, George J. Gray, the Fiberglas job superintendent, requested the business agent of Lathers to send two men to the job on Monday, May 11, to install the nailing channel. On May 11 two lathers showed up to do the work but were unable to do so because the floor was cluttered.

On Wednesday, May 13, Gray was informed by Rodell Bloomfield, business agent of Carpenters, that the agreement between Carpenters and Lathers, which assigned the installation of nailing channel to lathers, had been abrogated by Lathers and was no longer in effect, thereby permitting Fiberglas to assign anyone it wished to install nailing channel. Fiberglas then decided to assign this work to carpenters, and so advised both Lathers and Carpenters. On Friday, May 15, Lathers picketed the jobsite. The picket sign read:

> Fiberglass [sic] Engineering & Supply Co. refuses to hire Lathers and has no Contract with Lather's Local No. 238, A.F.L. & C.I.O.

Fiberglas filed a charge alleging violation of Section 8(b)(4)(D) of the Act. Lathers continued picketing the Federal Office Building until May 20, 1964, when Fiberglas removed carpenters from the job.

On June 15, 1964, pursuant to a petition filed by the National Labor Relations Board, Judge Howard C. Bratton of the United States District Court in Albuquerque, New Mexico, signed a decree granting the Board a temporary injunction enjoining Lathers from picketing or taking like action pending the Board's disposition of the instant matter.

C. *Contentions of the Parties*

Both Fiberglas and Carpenters contend that this action is a jurisdictional dispute and that Lathers, by its picketing of the Federal Office Building site, violated Section 8(b)(4)(D) of the Act. Moreover, they maintain that on the basis of greater economy and skill, including an existing training program, area practice, and the close working relationship which has developed over the years between Fiberglas and Carpenters, the installation of nailing channel should be awarded to Carpenters.

Lathers contends that this proceeding is not a jurisdictional dispute, that the purpose of its picketing was not to force Fiberglas to assign the installation of nailing channel to its members, but rather to recover jobs which had formerly been held by two of its members. However, should the Board find that a jurisdictional dispute does exist herein, Lathers contends that on the basis of its agreement of June 10, 1963, with Carpenters, which it asserts is extant, the existing area practice, and comparative efficiency of operation, it should be awarded the work.

D. *Applicability of the Statute*

Charges herein alleged a violation of Section 8(b)(4)(D) of the Act. The record shows, and Lathers does not deny, that on or about May 15, 1964, after Fiberglas began using carpenters to install nailing channel, Lathers commenced picketing the jobsite with a sign stating that Fiberglas would not hire and did not have an agreement with Lathers. Picketing ceased only when Fiberglas removed carpenters from the job. In view of the emphasis of this sign on the lack of a contract between Fiberglas and Lathers and the statement that Fiberglas refuses to hire Lathers, we find that there is reasonable cause to believe that an object of the picketing was to force and require Fiberglas to employ members of Lathers rather than members of Carpenters to install nailing channel, and that a violation of Section 8(b)(4)(D) has occurred and that the dispute is properly before the Board for determination under Section 10(k) of the Act.

MERITS OF THE DISPUTE

Section 10(k) of the Act requires the Board to make an affirmative award of disputed work after giving due consideration to various relevant factors; and the Board has held that its determination in a jurisdictional dispute case is an act of judgment based upon common sense and experience and a balancing of such factors.

1. *Collective-bargaining agreements:* Carpenters and Fiberglas have a collective-bargaining agreement covering the employees to whom Fiberglas assigned the work in dispute. Lathers has no contract with Fiberglas. On June 10, 1963, the Internationals of Carpenters and Lathers signed an agreement which gave Lathers jurisdiction over installation of nailing channel. The record indicates that this agreement was abrogated by Lathers, allowing Fiberglas to assign carpenters to install nailing channel.

2. *Company, area, and industry practice:* Although the record contains considerable evidence on area and industry practice, it is inconclusive. Fiberglas had used carpenters to install nailing channel and

ceased only deference to the June 10 agreement; therefore the assignment of this work to Carpenters is in accord with Fiberglas' past practice.

3. *Efficiency of operation:* It is not contended that either carpenters or lathers entirely lack the skills or ability to install nailing channel. However, Fiberglas asserts that the training which carpenters receive during the apprenticeship period provides more competent personnel. Moreover, Carpenters can provide a crew specialized in ceiling installation which makes it possible for one crew to do the entire installation making for greater economy, because, *inter alia*, any errors in the installation of the ceiling which have to be corrected by altering the nailing channel can be rectified by the crew then on the job. Lathers does not have an apprentice program comparable to that of Carpenters nor the specialized personnel whom Carpenters can provide.

Conclusion as to the Merits of the Dispute

Upon consideration of all pertinent factors we shall assign the work in dispute to carpenters. They are more skilled in the performance of the work than lathers who compete for it and have performed it to the satisfaction of Fiberglas, which desires to retain them on the job. The present assignment of the disputed work to carpenters is consistent with Fiberglas' current collective-bargaining agreement with Carpenters, it conforms to Fiberglas' past practice, and the efficiency with which carpenters may accomplish this job establishes a superior claim to the disputed work. We therefore conclude that Fiberglas' assignment of the work to carpenters should not be disturbed. We shall, accordingly, determine the jurisdictional dispute by deciding that carpenters, rather than lathers, are entitled to the work in dispute. In making this determination, we are assigning the disputed work to the employees who are represented by Carpenters but not to that Union or its members. Our present determination is limited to the particular controversy which gave rise to this proceeding.

DETERMINATION OF DISPUTE

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

1. Employees employed as carpenters by the Fiberglas Engineering & Supply Division, Owens-Corning Fiberglas Corporation at Albuquerque, New Mexico, currently represented by the United

Brotherhood of Carpenters and Joiners of America, Local No. 1319, AFL–CIO, are entitled to perform the work of installing nailing channel at the Federal Office Building, Albuquerque, New Mexico.

2. Wood, Wire, and Metal Lathers International Union, Local No. 238, AFL–CIO, is not and has not been entitled, by means proscribed by Section 8(b)(4)(D) of the Act, to force or require the Employer to assign the above work to lathers.

3. Within 10 days from the date of this Decision and Determination of Dispute, Wood, Wire, and Metal Lathers International Union, Local No. 238, AFL–CIO, shall notify the Regional Director for Region 28, in writing, whether it will or will not refrain from forcing or requiring the Employer, by means proscribed by Section 8(b)(4)(D), to assign the work in dispute to lathers rather than carpenters.

Chrysler Corporation *and* International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW–CIO) and its Local No. 412,[1] Petitioner. *Case No. 7–RC–582. September 16, 1964*

SECOND SUPPLEMENTAL DECISION AND ORDER

On February 24, 1964, the Petitioner filed a motion to clarify certification in the above case. An opposition to the motion was filed by the Employer. Upon considering the matter, the Board on March 25, 1964, referred the proceeding to the Regional Director for Region 7 for the purpose of holding a hearing on the issues raised by the parties.

A hearing was thereafter held on May 20 and 21, 1964, before Hearing Officer James R. McCormick. His 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 McCulloch and Members Leedom and Jenkins].

The motion for clarification, as supplemented by stipulations and testimony received at the hearing, indicates that the issue here is whether Russell Redd, an employee in the Employer's Brake Laboratory, and any future replacement or similar employees, should be included in the unit as a mechanic and/or driver, or should be regarded as an engineering contact man and excluded from the unit.

[1] The Local Union was added as a party at the hearing. The original certification, issued January 26, 1950, pursuant to a decision and direction of election reported in 87 NLRB 304, ran only to the International Union.