delivered from the warehouse. The dockhands at the warehouse then load the goods on the Employer's trucks for delivery to the homes of the various customers.

From the above facts, it is clear that the clerical employees, shipping and receiving clerks, markers, and wrappers employed at the warehouse are integral parts of the overall warehouse operation, and are appropriately included in the unit.[3] Accordingly, we find that the following employees employed at the Birmingham warehouses of the Employer's Birmingham, Alabama, operation constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.[4]

All warehouse employees employed in the Employer's warehouses located at 930 North 19th Street, Birmingham, Alabama, including truckdrivers, deliverymen, garage employees, clerical employees, shipping clerks, receiving clerks, markers, and wrappers, but excluding watchmen, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

[3] The Petitioner would also exclude Georgia McKee and John Hall on the ground that they are both supervisors. From the record it is clear that although both of these employees work as assistants to admitted supervisors, neither has the authority to hire, fire, reward, or discipline, etc., or to effectively recommend such action, or to substitute for the supervisors in their absence In addition, the testimony shows that neither employee has the authority to responsibly direct other employees in their work, although they sometimes relay directions to the employees from the supervisors In these circumstances we find that they are not supervisors and include them in the unit.

[4] At the hearing, the Employer filed a motion to dismiss the petition setting forth several grounds including, among others, the assertions that the unit is inappropriate, too limited in scope, arbitrarily drawn, and lacking in cohesiveness. This motion was referred to the Regional Director for consideration and thence to the Board. In view of our decision herein directing an election, we deny the Employer's motion to dismiss the petition.

Local 25, International Brotherhood of Electrical Workers, AFL–CIO *and* New York Telephone Company and Communications Workers of America, AFL–CIO, and Its Local 1104. *Cases Nos. 29–CD–2 (formerly 2–CD–301), 29–CD–2–2 (formerly 2–CD–301–2), 29–CD–2–3 (formerly 2–CD–301–3), and 29–CD–4 (formerly 2–CD–303). May 20, 1965*

DECISION AND DETERMINATION OF DISPUTE

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following the filing of charges under Section 8(b)(4)(D) of the National Labor Relations Act, as amended. A hearing was held before Hearing Officer Jordan Ziprin on various dates

between July 21 and August 13, 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 upon the issues. The rulings of the Hearing Officer made at the hearing are free from prejudicial error and are hereby affirmed. Briefs were filed by all the parties and have been duly considered.

Pursuant to the provisions of Section 3(b) of the Act, the National Labor Relations Board has delegated its powers in connection with these cases to a three-member panel [Members Brown, Jenkins, and Fanning].

Upon the entire record in these cases, the Board makes the following findings:

1. The New York Telephone Company, herein referred to as Telco, is a New York corporation engaged in the business of providing local and long distance communications and related services as part of a nationwide telephone system. As stipulated by the parties, during the year 1963, which period is representative of its annual operations generally, Telco had gross revenues in excess of $1 million for communications services between points within the State of New York and points in other States. The parties stipulated, and we find, that Telco is an employer engaged in commerce within the meaning of the Act and it will effectuate the policies of the Act to assert jurisdiction herein.

2. The parties stipulated, and we find, that Communications Workers of America, AFL–CIO, and its Local 1104, herein jointly referred to as CWA, and Local 25, International Brotherhood of Electrical Workers,AFL–CIO, herein referred to as IBEW, are labor organizations within the meaning of the Act.

3. The dispute.

A. *Statement of facts*

The instant dispute involves a portion of the work required prior to the installation of telephones; i.e., the installation of frames to hold telephone equipment, the pulling of cables into and within buildings and the attaching of those cables to interior walls, and the installation of terminal boxes. This work involves the use of such handtools as drills, hammers, screw drivers, and staple guns, and such devices as clamps, staples, screws, nuts, and bolts. The work of connecting or installing telephone equipment and the handling of live wires is not in dispute.

Although IBEW has never represented any Telco employees and Telco and IBEW have never entered into a collective-bargaining contract, the record shows that in 1903, Telco and Local 3, International

Brotherhood of Electrical Workers, executed an agreement concerning the assignment of certain types of telephone work and that on various occasions until 1917 they modified and reexecuted such agreement.[1] The parties do not dispute that the effect of this agreement was to obligate Telco, on jobs involving new construction or major alteration of buildings and on which all other work was being performed by employees belonging to AFL building and construction trades unions, to subcontract the work in controversy here to electrical contractors who would then assign such work to employees represented by the IBEW. Nor is there any dispute that in assigning the disputed work in Nassau County and in a portion of Suffolk County until the spring of 1963, Telco generally acted in conformity with the above agreements. The instant dispute arose when Telco announced to its supervisory personnel that, in the future, such work would be assigned to its own employees, who are represented for collective-bargaining purposes by CWA.

Telco and CWA allege that during the period between September 1963 and July 1964 IBEW members, stewards, or business agents, either refused to work or threatened walkouts at 10 different construction sites in Nassau and Suffolk Counties, when Telco employees represented by CWA were assigned the disputed work. At each site, the disputed work was being performed in connection with the construction of new buildings or major alterations of existing structures. In addition, it is not disputed that all employees working on these various projects, except the employees of Telco, were represented by unions affiliated with the Building Trades department of the AFL–CIO.[2]

B. *Contentions of the parties*

While admitting that IBEW members have refused to work on jobs where Telco employees were performing the disputed work, IBEW contends that the notice of hearing herein should be quashed because such refusals to work were spontaneous; that no agents of IBEW induced these walkouts; and, therefore, it is not responsible for such conduct. IBEW also denies that any of its agents has threatened walkouts by IBEW members. IBEW further takes the position that if the notice of hearing is not quashed, the disputed work should be performed by electricians employed by independent electrical con-

[1] Local 3 represented electricians in New York City as well as those in Nassau and Suffolk County. In 1932 Local 25 was chartered to take over the jurisdiction of Local 3 in Nassau and part of Suffolk County. In 1935 Local 3 notified Telco that it no longer considered itself bound by the agreement between Local 3 and Telco.

[2] On August 21, 1964, the United States District Court for the Eastern District of New York, concluding that there was reasonable cause to believe that IBEW had violated Sections 8(b)(4)(B) and (D), issued an injunction restraining IBEW from engaging in substantially the same conduct as is involved in the instant proceeding. The record of the hearing in the court proceeding has, by stipulation of all the parties, been incorporated into the instant record.

tractors. It relies primarily on the various contracts between its predecessor, Local 3, and Telco, executed in 1903 and thereafter, on the "Division of Work" guide issued by Telco for the use of its supervisors,[3] and on the admitted practice of Telco prior to 1963 of contracting out the disputed work in Nassau and part of Suffolk County to contractors employing electricians represented by IBEW.

Telco and CWA contend that the work should be performed by Telco's employees who are represented by CWA. Although conceding that, prior to 1963, the disputed work was contracted out to electrical contractors employing members of IBEW, they urge that Telco has since decided to assign the work to its own employees, that such assignment is more efficient and economical, that the work does not require the skills of a journeyman electrician, that only in the metropolitan New York City area is the work given to IBEW members, and that the assignment is consistent with both the Board certification of CWA and Telco's collective-bargaining agreement with CWA.

C. *Applicability of the Statute*

The Board must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) of the Act was violated before it may proceed with a determination of dispute pursuant to Section 10(k) of the Act.

The record contains evidence as to a number of incidents in connection with which it is alleged that IBEW engaged in conduct proscribed by Section 8(b)(4)(i) and (ii)(D). Among them are incidents at Sears Roebuck construction projects at Hicksville and Farmingdale. At the hearing, Kromroy, the communication manager of Sears Roebuck, testified that on May 15, 1964, electricians represented by IBEW reported sick and left the construction site of a new Sears retail store in Hicksville when Telco employees appeared for the purpose of installing telephone equipment, that on May 27, 1964, he went to the IBEW office where he had a conversation with Kraker, the IBEW business manager, and Costello, his assistant, and that either Kraker or Costello stated that ". . . if the New York Telephone Company was found doing any of the work on the job which was 'C' work, that their men would have to leave the job." Kraker denied that either he or Costello made such a statement.

[3] In 1946 Telco promulgated a document called "Division of Work," which it provided for the guidance of its supervisors in determining whether to use outside contractors or its own employees for specified types of work In this document, which was promulgated in conformity with the above agreements between Telco and IBEW, work which was to be subcontracted to independent electrical contractors was designated "C," work which was to be performed by Telco employees was designated "T," and work which was to be done by both was designated "J." The Division of Work document was in use at least as late as 1963. See *Communications Workers of America, Local 1104, AFL–CIO (Frederick Bond, d/b/a Bond Electric Company)*, 146 NLRB 388.

In connection with the same construction project, a representative of the general contractor, Uman Construction Corp., testified that he was told early in May 1964 by an IBEW steward named Pete (whose last name he did not know) that ". . . telephone men were doing work that . . . the electricians normally did, that . . . the electricians would not be able to work on the job if this continued." Kraker testified that the IBEW steward on the job was named Peter Truss. Truss testified that he was the steward on the job, that he did have a conversation with the general contractor's representative, but denied saying that the men would not be able to work. As noted above, electricians did subsequently leave the job, claiming to be ill.

In December 1963 Telco employees were engaged in installing telephone equipment at a warehouse being constructed for Sears Roebuck at Farmingdale. The record shows that the IBEW steward on the job was one Frederick R. Smith. Smith testified that when he saw Telco employees on the job he telephoned the IBEW office and spoke to Costello, that Costello told him Telco would be contacted concerning the matter, and that Costello gave him no further instructions. He testified further that he then called all 10 electricians on the job together and told them what had happened, and the electricians decided to walk off the job. When the electricians communicated this decision to the electrical contractor's foreman, the latter asked them to remain until he had an opportunity to straighten the matter out. Subsequently, the foreman told Smith that the Telco employees were being removed from the site and the electricians remained at work.

As noted, there is testimony in the record that in connection with the construction of the Sears Roebuck retail store in Hicksville, Business Agent Kraker or his assistant, Costello, and IBEW steward Truss threatened strike action if IBEW did not receive the disputed work. While Kraker and Truss denied that such statements were made, the Board has held that, at this stage of the proceedings, it is not its duty conclusively to resolve conflicts in testimony.[4] IBEW, while not denying its responsibility for the conduct of Kraker and Costello, contends that Truss, the union steward, was not acting on its behalf when engaging in the above conduct. In this connection, it relies particularly on the provision in its bylaws prohibiting stewards from causing a work stoppage. However, article X, section 2, of the bylaws makes it the duty of the steward, "To see that no trade or workmen encroach upon the jurisdiction of this Local Union;" and IBEW has repeatedly made it clear, and it again asserts in this proceeding, that the disputed work comes within its jurisdiction.[5] Moreover, it is not alleged that

[4] *Local Union No 3, International Brotherhood of Electrical Workers (Western Electric Co.)*, 141 NLRB 888, 893

[5] *Ibid.*

Truss caused a work stoppage, but only that he made threats.[6] Under all the circumstances, we are satisfied that there is reasonable cause to believe that IBEW threatened Sears and Uman Construction Corp. with a strike with an object of compelling Telco to assign the disputed work to IBEW, in violation of Section 8(b) (4) (ii) (D) of the Act.

With respect to the incident occurring at the construction of the Sears warehouse in Farmingdale, IBEW steward, Smith, admitted that he spoke to Costello on the telephone about Telco's having assigned the work to its own employees, that he spoke to the employer and obtained his permission to call a meeting of electricians, that he called such a meeting on the job, and that immediately thereafter these electricians decided to walk off the job and threatened Sears that they would do so. Smith and Costello denied that Costello instructed Smith to call a strike or that Smith induced the electricians to strike. However in view of all the circumstances, including IBEW's claim that it is entitled to the disputed work and our finding above that there is reasonable cause to believe that IBEW agents threatened a strike unless IBEW obtained the disputed work at Hicksville, we are satisfied that the above sequence of events may reasonably be interpreted as establishing that Costello, whether explicitly or by a "wink and a nod," indicated to Smith that the electricians at the warehouse job should stop work because the disputed work had been assigned to Telco employees, and that Smith transmitted these instructions to the electricians on the job, thus inducing them to engage in a strike. Accordingly, we conclude that there is reasonable cause to believe that IBEW also violated Section 8(b) (4) (i) (D).[7]

D. *Merits of the Dispute*

IBEW claims, and Telco admits, that since 1903, in the geographic area covered by this dispute, when a new building was being constructed or major alterations were being made on an existing building and all other employees on the project were members of AFL or AFL-CIO Building Trades Union, the work in controversy had been performed by IBEW members employed by electrical contractors. This company practice is further evidenced by the contracts dating back to 1903 between IBEW and Telco and the Division of Work guide which Telco issued to its supervisors. As the Company's past practice is one of the factors which we consider in making a determination under Section 10(k),[8] we find that in the instant case such practice favors the

[6] *Id.* at footnote 4.

[7] In view of our findings herein, we deem it unnecessary to consider whether, on the basis of the evidence of additional instances of work stoppages and threats of work stoppages contained in the record, there is also reasonable cause to believe that IBEW has further violated Section 8(b) (4) (D) of the Act.

[8] *International Association of Machinists Lodge No. 1743 (J. A. Jones Construction Company)*, 135 NLRB 1402.

contentions of IBEW. In weighing the significance of this factor, however, we note uncontradicted testimony establishing that in 1962 90 percent of the placing of terminal boxes and pulling of cable in Nassau County was, for one reason or another, performed by Telco employees rather than by employees of electrical contractors.[9] We also note that elsewhere in New York State (except in the metropolitan New York City area) the disputed work is also performed by Telco employees represented by CWA.[10]

The record further establishes that the use of independent electrical contractors to perform the disputed work requires the presence of a Telco foreman at all times, while use of Telco employees requires a foreman's presence only to get the work started. In addition, because the electrical contractors do not always have men available on short notice, if the work is being performed by electrical contractors, there is sometimes a delay of several hours or even an entire day before work can be started. Also, as noted earlier, the disputed work involves use of the simplest handtools and one can be trained to perform the work in a short time. Thus, the disputed work does not require the high skills of a journeyman electrician, and employees of Telco, as well as electricians, are qualified to perform the work. For all these reasons, we find that assignment of the disputed work to Telco employees results in greater efficiency and economy than would the utilization of electricians for that purpose.

In 1961 the Board certified CWA as collective-bargaining representative of all Telco's plant department employees. The current collective-bargaining agreement between these parties covers all such employees, including installers and linemen who have been assigned the disputed work by Telco. IBEW has no agreement with Telco but does have an agreement with the Nassau and Suffolk Chapter of the National Electrical Contractors Association (herein referred to as NECA), which is silent concerning the type of work in dispute herein.

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[9] Thus, under its agreement with IBEW, and under the "Division of Work" guide, Telco was not obligated to assign the disputed work to electricians employed by electrical contractors where there were nonunion employees on the project or where only minor alterations of a building were involved. Further, Telco has assigned the work to its own employees where the construction work was being done on county-owned buildings. See *Bond Electric, supra,* footnote 3. Finally, the record establishes that Telco employees were often assigned the disputed work where there were no electricians present on the constructionsite or when no protest was received by Telco from IBEW. The placing of terminal boxes and the pulling of cable is a portion of the work in dispute in this proceeding.

[10] We note further in this connection that Telco's past practice of awarding certain work to independent contractors who employ IBEW members constituted a narrow exception to its general practice of awarding work to its own employees, now represented by CWA. Moreover, the factors which governed the award to employees represented by IBEW related not to the nature of the work being performed or other factors normally given weight by the Board, but to the general character of the construction involved and the representation of the employees performing other aspects of such construction work. In these circumstances, we cannot agree with our dissenting colleague that this practice is entitled to virtually controlling weight

We find, therefore, that Telco's assignment of the work is consistent with the Board certification of CWA as representative of Telco's employees and with Telco's collective-bargaining agreement with CWA. We further find that such assignment is not inconsistent with the NECA–IBEW contract.

Weighing the factors relied upon by Telco and CWA on the one hand against those cited by IBEW on the other, we conclude that the former outweigh the latter.[11] As Telco uses its own employees to perform such work throughout New York State (with the exception of the New York City metropolitan area), as Telco has now assigned such work to its own employees in the area covered by the instant proceeding, as the performance of such work by Telco employees is more efficient and economical than utilization of electricians, as Telco employees are sufficiently skilled to perform the work, and as the assignment is consistent with the Board certification and with the terms of the collective-bargaining agreement between Telco and CWA, we shall determine the dispute in favor of Telco employees represented by CWA. Our present determination is limited to the particular controversy which gave rise to this proceeding.[12] In making this determina-

[11] Our dissenting colleague would assign the disputed work to employees represented by IBEW in part because a contrary assignment would result in a loss of jobs to these employees. However, the Board has applied the "loss of jobs" test only where *new* work has been introduced into a plant either because of changes in technology (*Philadelphia Inquirer, Division of Triangle Publications,* 142 NLRB 36; *The Denver Publishing Company,* 144 NLRB 1408), or changes in the employer's method of operations (*United States Steel Corporation,* 150 NLRB 88; *National Publishing Division, McCall Corporation,* 150 NLRB 388, *Peabody Coal,* 151 NLRB 358). Here any loss of jobs would be attributable only to the fact that Telco had reassigned the same work from employees represented by IBEW to employees represented by CWA. If the "loss of jobs" test were applied in this context, it is apparent that an employer would be virtually precluded from changing a work assignment.

The dissent, citing *Northern Metal Company,* 137 NLRB 1451, and *Capital Electrotype Company, Inc.,* 137 NLRB 1467, would also rely on the fact that CWA had "participated in the distribution of work under the Division of Work plan under which IBEW claims the instant work." But in those cases, it was the respondent union, which in the past had consented to the employer's assignment of the disputed work to employees represented by another union, which was alone seeking the change. In that context, it is valid to regard the respondent union's acquiescence as a factor which militates against overturning the employer's assignment. Here, however, after CWA's participation in the distribution of work under the Division of Work plan, Telco reassigned the disputed work to employees represented by CWA. In these circumstances, we do not believe that CWA's earlier acquiescence in the assignment of work to employees represented by IBEW can preclude its or our reappraisal of the changed situation brought about by Telco's reassignment of the work to a different group of employees.

[12] Our determination herein covers the assignment of the work in issue in the area comprising Nassau County and part of Suffolk County, which is the area served by Telco where the geographical jurisdiction of Communications Workers of America, Local 1104, AFL–CIO, and Local 25, International Brotherhood of Electrical Workers, AFL–CIO, coincide. *Communications Workers of America, Local 1104 (Frederick Bond, d/b/a Bond Electric Company),* 146 NLRB 388, footnote 5; *Local Union No. 3, International Brotherhood of Electrical Workers (Western Electric Company),* 141 NLRB 888, footnote 12. While we have based our findings that there is reasonable cause to believe that IBEW violated Section 8(b)(4)(D) on incidents occurring at two construction sites, one in Hicksville and the other in Farmingdale, New York, as noted, the record establishes that the scope of the instant dispute extends throughout Nassau and part of Suffolk counties.

tion, we are awarding the controverted work to Telco employees represented by CWA, and not to CWA or its members.

Accordingly, we find that IBEW was not, and is not, entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require Telco to assign the disputed work to its members, rather than to Telco employees represented by CWA.

DETERMINATION OF DISPUTE

Upon the basis of the foregoing and the entire record in the case, the Board makes the following Determination of Dispute pursuant to Section 10(k) of the Act:

A. Employees of the New York Telephone Company, currently represented by Communications Workers of America, AFL–CIO, are entitled to perform the following work:

(1) Installing and fastening devices and structures designed to hold and support telephone equipment.

(2) Pulling telephone cables and wires into and within buildings and structures, and attaching them to interior walls.

(3) Installing and fastening terminal boxes where cables are connected on to interior walls.

B. Local 25, International Brotherhood of Electrical Workers, AFL–CIO, is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require the New York Telephone Company to assign the above-described work to electricians who are currently represented by Local 25, International Brotherhood of Electrical Workers, AFL–CIO.

C. Within 10 days from the date of this Decision and Determination of Dispute, Local 25, International Brotherhood of Electrical Workers, AFL–CIO, shall notify the Regional Director for Region 29, in writing, whether or not it will refrain from forcing or requiring New York Telephone Company to assign the work in dispute to its members, rather than to employees of New York Telephone Company represented by Communications Workers of America, AFL–CIO.

MEMBER FANNING, dissenting:

Accepting the determination of my colleagues that the instant case should be treated as a jurisdictional dispute within the meaning of Sections 10(k) and 8(b)(4)(D) of the Act, I would award the work in dispute to electricians represented by the IBEW, based principally upon Telco's practice of more than half a century in awarding such work to them in the metropolitan New York City area. This practice, evidenced by the Division of Work agreement [13] and its hereto-

[13] A more detailed history and description of the original agreement and the subsequent Division of Work document is found at footnote 3 of the Board's decision in *Bond Electric, supra.*

fore observance by all parties, is recognized by the majority as favoring the IBEW. In my opinion, however, it is entitled to greater weight than that accorded it by the majority.

In its discussion of this factor, the majority mentions only incidentally that Telco's practice of subcontracting the disputed work to electrical contractors whose employees are represented by the IBEW, in accordance with the terms of the Division of Work document, still continues in the rest of the metropolitan New York City area, including part of Suffolk County, and that, for 60 years prior to 1963, that practice was in effect in the rest of Suffolk County and in Nassau County as well. When Telco's practice is viewed in this more complete context, the strength of this factor favoring the IBEW appears more readily than it does from the majority's treatment. In this regard, it is worthy of note that in both *Bond* and *Western Electric*, *supra*, involving the same or related parties, the Board relied on the specific practice found in each case to support CWA. Here, as admitted by the majority and demonstrated in more detail herein, the relevant practice favors the IBEW.

Since we are concerned here only with the particular area of Nassau and Suffolk Counties where the jurisdiction of the two Unions coincide,[14] I think that the majority's reliance on the practice "elsewhere in New York State," in an effort to detract from the significance of the practice standard in the former area, is misplaced. Similarly, its attempt to rely on some contrary practice in 1962, in order to mitigate the importance of this factor, must fail. The majority states that the 1962 departures from the usual practice favoring the IBEW took place "for one reason or another." But an examination of the reasons for the departures listed in footnote 9, *supra*, reveals that the work involved occurred under conditions which *did not* call for subcontracting of the work under the terms of the Division of Work document. Those instances are thus irrelevant to a discussion of the practice prevailing under conditions which *did* require subcontracting. Thus, under this document, the disputed work is to be subcontracted to IBEW employers only when performed on new construction or major alterations, and only when all other employees on the constructionsite were members of Building Trades unions. In the instant case, those conditions were met, and the practice relied upon by the IBEW is that occurring only under such conditions. How, then, does work performed under different conditions and calling for a different method of work detract from that specific practice? And, with respect to the work on county-owned buildings, the Board in *Bond Electric*, *supra*, held that a separate practice, which favored CWA, obtained on such buildings, and that only the practice on those buildings was relevant. If the same strict standards of

[14] See footnote 10, *supra*.

relevance and specificity used in *Bond* are applied here, little remains of the majority's effort to minimize the weight of the practice standard favoring the IBEW.

In view of the fact that the parties agree that the Division of Work agreement "obligated" Telco to subcontract the disputed work whenever the above conditions prevailed, and the further fact that no one disputes that these conditions did prevail at the sites here in question, I would, under the circumstances of this case, attach controlling significance to the agreement and the 60-year practice thereunder. Reliance upon this method of settling or avoiding disputes would be in keeping with the public policy of promoting industrial stability by encouraging private parties to resolve such recurring matters of controversy.[15] The importance of the standard of the Employer's past practice in general can be seen from the fact that the Board has attached significant weight to it in more cases under Section 10(k) than to any other single standard.[16] Nor do I think it is outweighed here by any opposing considerations of Telco's assignment, economy of operations, or CWA's contract and certification. Particularly is this so since CWA, during the years in which it has represented employees of Telco, has participated in the distribution of work under the Division of Work plan under which the IBEW claims the instant work. See in this regard *Local 1291, International Longshoremen's Association (Northern Metal Company)*, 137 NLRB 1451, 1456–1457; *Local 28, International Stereotypers' and Electrotypers' Union of North America (Capital Electrotype Company, Inc.)*, 137 NLRB 1467, 1472.[17]

The IBEW's claim to the disputed work is also supported by the "job loss" factor, which we have utilized increasingly in recent cases.[18]

[15] I do not suggest that having observed the provisions of the Division of Work agreement for many years Telco is therefore forever bound to its terms. It is, of course, free at any time to work out desired changes with the Union involved. However, it would not appear to foster the policies of the Act to permit Telco so abruptly to disregard the agreement which previously had distributed the work to the apparent satisfaction of all parties

[16] In view of our considerable experience with the various factors outlined in *J. A. Jones, supra,* and subsequent cases, I think the time has come when it would be both appropriate and useful either to establish a standard of values for these factors, to be utilized in future proceedings, or, at the least, to list certain factors to which we will attach significant weight whenever they are present in a particular case See Cohen, *The NLRB and Section 10(k): A Study of the Reluctant Dragon,* 14 Labor Law Journal, 905, 917–918 (1963).

[17] Unlike my colleagues, I would not restrict our reliance upon a union's participation or acquiescence in a prior practice of work assignments to those instances in which that union is the respondent in the proceeding before us A union's acquiescence in a former practice which is adverse to its interest is relevant, whatever position the union may occupy in that proceeding

[18] *Philadelphia Typographical Union, Local No. 2 (Philadelphia Inquirer, Division of Triangle Publications)*, 142 NLRB 36, 42–43; *Denver Photo-Engravers' Union No. 18, etc. (The Denver Publishing Company)*, 144 NLRB 1408, 1412–1413, *International Longshoremen's & Warehousemen's Union, et al. (United States Steel Corporation)*, 150 NLRB 88, *Women's Bindery Union, Local No 42, International Brotherhood of Bookbinders*

As Telco's sudden departure from its admitted practice will have the necessary effect of depriving employees represented by the IBEW of work which they previously performed, "conceivably" [19] leading to the elimination of some of their jobs, and as no jobs can be lost to CWA if Telco merely continues to contract out the disputed work, I would add this consideration to that of Telco's past practice as support for the IBEW's claim to the disputed work.

Finally, I think that the matter of the contractual claims of the respective unions needs to be placed in clearer perspective. Although Telco's collective-bargaining agreement with CWA covers the work in question, it is worthy of note that this agreement contains a clause specifically permitting Telco to contract out work which it has "customarily" contracted out, which would include the disputed work. Further, IBEW has a contract with NECA, whose contractor-members have "customarily" performed such work under subcontracts from Telco, in accordance with the Division of Work agreement.[20] Therefore, although the IBEW–NECA contract may be "silent" with respect to the disputed work, it cannot be denied that that contract has in fact been applied to electricians performing this very work in the past. Under these circumstances, CWA's contract with Telco is, at best, ambiguous with respect to the disputed work. When it is considered in conjunction with the IBEW–NECA contract and the prior practice of subcontracting the work to NECA contractors, I would conclude that this factor actually favors neither party.

For the reasons stated above, I would award the work in question to electricians who are employed by independent electrical contractors and represented by the IBEW.

(National Publishing Division, McCall Corporation), 150 NLRB 388, *United Mine Workers of America, et al. (Peabody Coal Company)*, 151 NLRB 358.

If, as acknowledged by the majority, an adverse effect on employment is a proper consideration when caused by such factors as new work, technological advances, and customer complaints, I fail to see why it is not equally proper when brought about by the very reassignment of work which gives rise to the dispute before us. Indeed, the "job loss" consideration seems even more valid in the latter context, when the employer's reassignment may be motivated in large part by its desire to take advantage of a cheaper wage rate. In any event, the instant case is not as dissimilar to those just cited as the majority would have it appear, for, although the nature of the disputed work is unchanged, Telco's method of having it performed has changed substantially; i e, from subcontracting the work to using its own employees. And, it is this change in the method of performance which could result in a loss of jobs to employees of outside electrical contractors.

[19] *Denver Publishing Company, supra,* footnote 18.

[20] The significance of subcontracting clauses in these proceedings has recently been recognized in *Oil, Chemical and Atomic Workers International Union, etc. (Merck & Co., Inc.)*, 151 NLRB 374. I can understand the position of the majority in that case where, in awarding the disputed work to Merck's plant employees represented by OCAW, they relied upon the contract between Merck and the OCAW which *prohibited* the subcontracting of work "normally performed" by OCAW, and upon Merck's practice of not subcontracting the disputed work. Here, however, as noted above, the Telco-CWA contract *permits* Telco to contract out work which it had "customarily" subcontracted under its past practice. Thus, under the reasoning in *Merck* and the contrary contractual conditions present here, I should think that CWA's contract would be entitled to little if any weight.