of America, AFL–CIO, are entitled to perform all plumbing work on prefabricated building units manufactured by Midwest Homes, Inc., in its plant at Carlisle, Indiana.

2. Local 157, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL–CIO, is not entitled to force or require Midwest Homes, Inc., its successors or assigns, to assign any of the above work to employees represented by such union.

3. Within 10 days from the date of this Decision and Determination of Dispute, Local 157, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL–CIO, shall notify the Regional Director for Region 25, in writing, whether it will or will not refrain from forcing or requiring Midwest Homes, Inc., its successors or assigns, by means proscribed by Section 8(b)(4)(D) of the Act, to assign the above-described work to employees of such Company represented by such Union.

The Wood, Wire and Metal Lathers International Union, Local Union No. 68, AFL–CIO *and* State Lathing Co., Inc., and Dry-Wall Steel Erectors, Inc.[1] *and* Carpenters District Council of Denver and Vicinity, an affiliate of United Brotherhood of Carpenters and Joiners of America, AFL–CIO. *Case No. 27–CD–59. July 1, 1965*

DECISION AND DETERMINATION OF DISPUTE

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following a charge filed by State Lathing Co., Inc. and Dry-Wall Steel Erectors, Inc., herein referred to as State Lathing and Steel Erectors, respectively, or jointly as the Employer, alleging that The Wood, Wire and Metal Lathers International Union, Local Union No. 68, AFL–CIO, herein referred to as the Lathers or the Respondent, had induced and encouraged employees of State Lathing to strike for the purpose of forcing or requiring the Employer to assign particular work to members of the Respondent rather than to members of Carpenters District Council of Denver and Vicinity, an affiliate of United Brotherhood of Carpenters and Joiners of America, AFL–CIO, herein referred to as Carpenters. A hearing was held before Hearing Officer Allison E. Nutt, on February 18, 1965. All parties appeared at the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce

[1] For reasons stated in this Decision, we find that these corporations constitute a single employer within the meaning of Section 2(2) of the Act.

evidence bearing on the issues. The rulings of the Hearing Officer made at the hearing are free from prejudicial error and are hereby affirmed. The Employer, the Respondent, and the Carpenters filed briefs which 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 this case to a three-member panel [Chairman McCulloch and Members Fanning and Brown].

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

I. THE BUSINESS OF THE EMPLOYER

State Lathing Co., Inc., is an employer engaged in the lathing and plastering business in Colorado and receives goods directly and indirectly from outside of Colorado valued at more than $50,000 per year. State Lathing usually has from six to eight jobs in progress simultaneously.

Dry-Wall Steel Erectors, Inc., is an employer also engaged in the lathing and plastering business in Colorado. Steel Erectors was organized as a corporation in December 1964, by the three individuals who own all the stock in State Lathing Co., Inc., Steel Erectors was organized for the specific purpose of installing metal components to receive drywall surfaces. It employed its first workmen in January 1965. These employees were employed on jobs which previously had been assigned to State Lathing employees pursuant to agreements between State Lathing and certain drywall contractors on the particular jobs in question. The work of installing metal components to receive drywall surfaces was taken over by Steel Erectors without any change being made in the agreements between State Lathing and the drywall contractors. Upon the formation of Steel Erectors, State Lathing announced that, thenceforth, it would install metal components only on jobs which the metal components were to receive plaster surfaces, and it would not perform such work for drywall contractors.

Gurley A. Owens is general manager of State Lathing and of Steel Erectors. Owens controls the labor relations policies of each corporation. He negotiated and signed the collective-bargaining agreement that each corporation has with the particular union representing its employees.

Steel Erectors owns no tools or equipment and rents such items from State Lathing. Both corporations operate out of the same office; a single office clerk performs the necessary clerical duties of each corporation. As already noted, the same individuals are stockholders in each corporation, although only one of them, the attorney representing each corporation in this case, is a director in each corporation.

On the basis of the foregoing, including particularly the following facts: (1) the capital stock of State Lathing and Steel Erectors is

owned by the same three individuals, (2) both corporations are managed by the same individual out of single office, and that individual establishes the labor relations policies of each corporation, and (3) the two corporations are engaged in essentially the same business, with Steel Erectors renting equipment and tools from State Lathing for the purpose of performing work State Lathing previously had been performing, we find that State Lathing and Steel Erectors constitute a single employer engaged in the erection of metal studs to receive drywall and other surfaces. Accordingly, on the basis of the commerce facts with respect to State Lathing's operations, we find that it will effectuate the policies of the Act to assert jurisdiction over the operations of State Lathing and Steel Erectors, the Employer herein.

II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated, and we find, that the Respondent and the Carpenters are labor organizations within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. *The work in issue*

Metal tracks, metal studs, and bracing materials used in the erection of interior walls or partitions receive a surface of either plaster or drywall material. The work in dispute here is the installation of the metal tracks, metal studs, and bracing materials which are to receive drywall surfaces.[2]

B. *Background*

State Lathing has been an employer of members of Lathers continually since 1959 during which period there have been continuous contracts between the parties. On December 31, 1964, the stockholders of State Lathing formed Steel Erectors and on the same date Steel Erectors entered into a collective-bargaining agreement with Carpenters.

The record in this case establishes that the disputed work was performed by lathers in the past and that State Lathing had never employed carpenters for the work. The record further shows that, immediately prior to the formation of Steel Erectors, State Lathing was installing metal components to receive drywall on jobs at the Denver Federal Center and at the Lincoln Towers, an 11-story office building in Denver. The last metal-stud work performed by State Lathing at the Federal Center with lathers was in the first week of December.

[2] Lathers contends that the work in dispute includes erection of metal components to receive surfaces other than drywall, as well as those erected to receive drywall surfaces. However, as the Carpenters make no claim for work of erecting metal components to receive other than drywall surfaces, but has only noted on this record its willingness to have its members perform such work, if an employer assigns such to its members, and as the Employer herein has continued to assign such work to members of the Lathers, we find that the work in dispute is only that described in the text above.

At the Lincoln Towers building, State Lathing had commenced work in October 1964, using lathers. On the Lincoln Towers job, State Lathing had an outstanding bid with Denver Dry Wall Company in the form of a guaranteed price per lineal foot for the installation of interior partitions, good for 18 months. The arrangement was that Denver Dry Wall would order work to be done by State as the project progressed and the last work performed by State Lathing was completed in the latter part of November 1964. The record therefore establishes that the assignment of the work in dispute on the above jobs was originally made to lathers. Lathers performed the work in dispute on both jobs in the fall 1964, up until January 1965, when Steel Erectors began performing work on both jobs with carpenters. Upon formation of Steel Erectors, as already noted, State Lathing announced that it no longer would install metal tracks and studs on jobs which were to receive drywall surfaces, as such work was, henceforth, to be done by Steel Erectors.

On January 4, 1965, Respondent asked that Steel Erectors sign a collective-bargaining agreement. Steel Erectors refused because its employees, when hired, would be covered by the collective-bargaining agreement with Carpenters. Respondent thereupon warned Steel Erectors that it would refuse to supply workmen to State Lathing jobs. On January 5, Respondent told two supervisors (members of Lathers) employed by State Lathing that they would be subject to fines and loss of membership if they worked with members of Carpenters. On January 11 employees of State Lathing represented by Lathers refused to report for work on jobs other than those on the Federal Center and Lincoln Towers buildings. Respondent again said its members would not work for State Lathing while members of Carpenters were employed by Steel Erectors. Respondent subsequently agreed to supply men to State Lathing pending settlement of the present dispute.

State Lathing usually has a number of jobs in progress simultaneously. Prior to December 31, 1964, it provided lathing services to both plastering and drywall contractors. With the formation of Steel Erectors on December 31, 1964, State Lathing announced that it would no longer install metal components for drywall application and, henceforth, such work would be done by employees of Steel Erectors who were represented by Carpenters. Since December 31, 1964, State Lathing has continued to install metal components to which materials other than drywall were to be applied. The parties are in agreement that the skill and ability required to install all types of metal components are the same, are not affected by the nature of covering materials to be applied to them, and that both unions are able to supply well-qualified, experienced workmen.

C. *Contentions of the parties*

Respondent contends that the work of installing metal tracks and studs to receive drywall is the same as for installing metal tracks and studs to receive other materials. Members of Lathers are qualified to do all types of installation and have been doing so for State Lathing since 1959. Respondent also contends that State Lathing and Steel Erectors constitute a single employer under the Act and the formation of Steel Erectors was a subterfuge to evade State Lathing's contractual obligation to the Lathers. Finally, Respondent asserts that the disputed work belongs to its members on the basis of custom and practice in the industry.

The Carpenters argues that Steel Erectors is a bona fide employer which voluntarily entered into a collective-bargaining agreement with Carpenters which is dispositive of the issue herein; that in the Denver area carpenters have customarily installed metal studs to receive drywall; and that the assignment of the work in dispute to its members should be sustained on the basis of efficiency of the Employer's operation and its assignment of the work.

The Employer gave no reason for State Lathing's decision to discontinue the work of installing metal components to receive drywall and have such work done by employees of Steel Erectors. Respondent Lathers was notified in October 1964 that State Lathing intended to change the work assignment and the change was made on January 1, 1965. In its brief the Employer contends that the activities of the representatives of the Respondent were improper and coercive and violated standards of fair practice by attempting to use one employer corporation to influence the acts of another employer corporation.

D. *Applicability of the statute*

The charges filed herein allege a violation of Section 8(b)(4)(D) of the Act: The record shows, and Respondent does not deny, that it threatened to and did stop work on jobs in which State Lathing was involved in order to force Steel Erectors to use lathers rather than carpenters on the Federal Center and Lincoln Towers building jobs.

We find that there is reasonable cause to believe 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.

E. *Merits of the dispute*

Section 10(k) of the Act requires the Board to make an affirmative award of the disputed work, after giving due consideration to various relevant factors. The following are the factors relied on by the parties to the dispute to support their respective claims:

1. The collective-bargaining agreements

The Carpenters has a contract with Steel Erectors which it claims and the purpose of this case we assume, assigns the work in dispute to employees represented by the Carpenters.

Respondent Lathers contends that its contract with State Lathing assigns the work in dispute to its members. In a previous case, however, we found that the same contractual language did not specifically assign work similar to that involved herein to members of the Lathers.[3]

We do not consider the bargaining agreement between Steel Erectors and the Carpenters to have controlling weight because this contract was executed at a time when employees of State Lathing, who were covered by an existing collective-bargaining agreement with Respondent Lathers, had been performing the work in dispute under terms and conditions of employment set forth in that collective-bargaining agreement.

2. Company, area, and industry practice

Although both disputants offered considerable evidence on area and industry practice, such evidence does not disclose a controlling practice.[4] As has already been noted, the Employer's past practice has been to assign the work in dispute to lathers under its collective-bargaining agreement with Respondent. Such work on the very projects involved herein was performed by members of the Lathers pursuant to such assignment. It was not until formation of Steel Erectors that the Employer assigned the work to carpenters represented by Carpenters. The Employer's present assignment, therefore, represents a change in the Employer's past practice.

3. Employee skills and efficiency of operations

It is not contended that either lathers or carpenters lack the skills or ability to perform the work of erecting the metal tracks and metal studs which is in dispute in this case. The record indicates that the skill required to erect these metal components is the same whether they are to receive a dry plaster wall surface or some other surface. The Employer is continuing to use lathers to erect metal components which receive plaster surfaces. There is no evidence in this record to suggest that the assignment of the work in dispute to carpenters leads to a more efficient operation than would assignment of the work to lathers.

[3] *Carpenters District Council of Denver & Vicinity, AFL–CIO (J. O. Veteto and Son)*, 146 NLRB 1242.

[4] The parties stipulated that much of the record in the *Veteto* case be made part of the record in this case. There, the same two labor organizations were involved as are involved herein. They presented much evidence as to industry and area practice The Board found such evidence to be inconclusive. Such additional evidence as to area and industry practice as was adduced at the instant hearing does not favor either labor organization.

4. Action of the Joint Board

Both Unions cite numerous decisions of the National Joint Board for the Settlement of Jurisdictional Disputes to support their claims to the disputed work. There has been, however, no determination by, or submission to, the Joint Board in the present dispute, nor has this Employer agreed to be bound by decisions of the Joint Board.

Conclusions

Upon consideration of all pertinent factors appearing in the entire record, we shall assign the work in dispute to lathers. Lathers are as skilled in the performance of the work in dispute, as are the carpenters who compete for it. Lathers started to perform the work in dispute on the two projects directly involved. Assignment of the work to lathers is not inconsistent with area and local industry practice. It is consistent with the collective-bargaining agreement between the Lathers and the Employer under which lathers had generally been performing the work in question, until the Employer recognized the Carpenters, and substituted carpenters for lathers on the two projects. In these circumstances, we find that it would upset the stability of the existing collective-bargaining relationship were we to honor the Employer's assignment of the work in dispute to the Carpenters.

We shall determine the existing jurisdictional dispute by deciding that lathers, rather than carpenters, are entitled to the work in dispute. As the Employer announced, upon the formation of Steel Erectors and that company's execution of a collective-bargaining agreement with the Carpenters, that it intended to follow the work assignment placed in issue herein for all future jobs, we shall make this determination applicable to all similar work being preformed by, or which may be awarded to, the Employer in Denver, Colorado, and vicinity. In making this determination, we are assigning the disputed work to the employees of the Employer who are represented by the Lathers but not to that union or its members.

DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the foregoing findings and the entire record in this proceeding, the National Labor Relations Board hereby makes the following determination of the dispute:

Lathers employed by State Lathing Co., Inc., who are represented by The Wood, Wire and Metal Lathers International Union, Local Union No. 68, AFL–CIO, are entitled to perform the work of erecting all metal components, including metal tracks, metal studs, and bracing components which are installed to receive drywall on interior

partitions on the Lincoln Towers and Federal Center jobs, and on all other jobs being performed by, or which may be awarded to, the Employer in Denver, Colorado, and vicinity.

Orange Belt District Council of Painters #48, AFL–CIO, its affiliated Local Unions, and its Agents *and* Calhoun Drywall Company

Building and Construction Trades Council of San Bernardino and Riverside Counties, AFL–CIO *and* Calhoun Drywall Company. *Cases Nos. 21–CC–449–1 and 21–CC–449–2. July 1, 1965*

SUPPLEMENTAL DECISION AND ORDER

On October 23, 1962, the National Labor Relations Board issued a Decision and Order in the above-entitled proceeding,[1] finding, *inter alia*, that the Respondent Orange Belt District Council of Painters #48, AFL–CIO, its affiliated Local Unions, and its Agents (herein called the Respondent Painters) and the Respondent Building and Construction Trades Council of San Bernardino and Riverside Counties, AFL–CIO (herein called the Respondent Council) had engaged in certain conduct in violation of Section 8(b) (4) (ii) (B) of the National Labor Relations Act, as amended, and ordering them to cease and desist therefrom and to take certain affirmative action, as set forth herein. Thereafter, pursuant to its Decision of January 30, 1964, the United States Court of Appeals for the District of Columbia Circuit vacated the Board's Order and remanded the case to the Board for the purpose of supplementing the record with additional evidence.[2] On April 28, 1964, the Board issued an Order reopening the record in this case and directing that a further hearing be held for the purpose of receiving further evidence in conformity with the court's remand.

On November 4, 1964, Trial Examiner James R. Hemingway issued a Supplemental Decision in the above-entitled proceeding, finding that the Respondents had engaged in unfair labor practices in violation of Section 8(b) (4) (ii) (B) and recommending that the Board's Order that they cease and desist therefrom and take certain affirmative action be reaffirmed and enforced, as set forth in the attached Trial Examiner's Supplemental Decision. Thereafter, the Respondents filed exceptions to the Trial Examiner's Supplemental Decision and a brief in support thereof. After the transfer of the case to the Board, the

[1] 139 NLRB 883.
[2] 328 F. 2d 534.