cated their desire to remain outside such existing unit. In either event, the Regional Director is instructed to issue a certification of the results of the election to such effect.

[Text of Direction of Election omitted from publication.]

Members Fanning and Jenkins took no part in the consideration of the above Decision and Direction of Election.

San Francisco Metal Products Company, d/b/a O'Hara Metal Products Co., Petitioner and International Association of Machinists and Aerospace Workers, AFL-CIO, Local Lodge No. 68, and Tool and Die Craftsmen, National Federation of Independent Unions. Case No. 20-RM-751. October 15, 1965

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held on June 28, 1965, before Hearing Officer Walter L. Kintz, Jr. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer and Tool and Die Craftsmen, National Federation of Independent Unions, herein called Tool and Die Union, have filed briefs.

Pursuant to 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 Jenkins and Zagoria].

Upon the entire record in this case, the Board finds:

- 1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- 2. The labor organizations involved claim to represent certain employees of the Employer.
- 3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Sections 9(c) (1)(B) and 2(6) and (7) of the Act.

Tool and Die Union contends that an existing collective-bargaining agreement with California Metal Trades Association, herein called CMTA, is a bar to this proceeding.

Arrow Tool and Die Works, herein called Arrow, was a partnership consisting of two partners, Reno Bottano and Albert Hill, engaged in tool-and-die work. It had two employees. Arrow was a member of the CMTA and was represented for collective-bargaining purposes by

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that organization as part of a multiemployer unit. On May 31, 1965, a 2-year collective-bargaining contract between CMTA and Tool and Die Union expired without a new contract having been agreed to. On June 7, 1965, the two contracting parties reached a tentative understanding on terms for a new agreement. The terms were ratified by the Union and various members of the CMTA a few days later, although not by Arrow, and embodied in a written contract which CMTA members approved on June 9, 1965. It is this contract which is asserted to be a bar.

O'Hara Metal Products, the Employer, was incorporated by Charles O'Hara in October 1964. O'Hara had no connection with Arrow or with its partners. In October, O'Hara Metal Products took a 6-month option to purchase the business of Arrow. In April 1965, O'Hara Metal Products exercised its option and took over the Arrow business, although no formal contract was signed until June, at which time O'Hara paid 5 percent in cash and the remainder in the form of two promissory notes payable in equal amounts to the partners. The promissory note to partner Hill, but not to partner Bottano, is convertible to stock of O'Hara Metal Products at the option of the noteholder. However, the Hill note has not been converted, and neither of the Arrow partners has any stock interest in O'Hara Metal Products.

Arrow had been engaged exclusively in tool-and-die work for outside companies and employed two tool-and-die makers. On commencing operation of the Arrow business, O'Hara Metal Products sold a substantial amount of the Arrow machinery, moved in springmaking machinery, and began manufacturing coil springs as its principal product. It also increased the work force from 2 employees to 10 employees, including 2 temporary workers. Of the present work force, five employees are tool-and-die craftsmen and the others, including the temporary employees, are production workers. O'Hara Metal Products continues to service former Arrow customers, but the greatest part of its present business is springmaking, which was not the business of Arrow. Arrow partner Bottano is an hourly paid employee of O'Hara Metal Products, and partner Hill is its chief engineer.

On June 3, 1965, International Association of Machinists and Aerospace Workers, AFL-CIO, Local Lodge No. 68, herein called the IAM, requested recognition as bargaining representative of the Employer's production and maintenance employees. On June 9 the Employer filed the present petition.

The Employer has never signed the 1965 collective-bargaining contract between the CMTA and Tool and Die Union or authorized the CMTA to act as its bargaining representative. Nevertheless, Tool and Die Union contends that O'Hara Metal Products is the successor in interest to Arrow and is therefore bound by the present collective-bar-

gaining contract between CMTA and Tool and Die Union. Both the Employer and the IAM deny this contention of the Tool and Die Union.

We reject the argument that O'Hara Metal Products is the legal successor to Arrow and thus bound by the latter's collective-bargaining contracts. O'Hara Metal Products is a company completely separate from and independent of Arrow. The latter's partners have no equity interest in O'Hara and perform no supervisory functions for the latter; they are now only its employees. O'Hara has enlarged and changed the primary business of Arrow, using new machinery and manufacturing new products. Accordingly, we find that O'Hara Metal Products is not a legal successor to Arrow and that the collective-bargaining contract between CMTA and the Tool and Die Union is therefore not a bar to this proceeding.¹

The IAM seeks to represent all the Employer's production and maintenance employees. Alternatively, it is willing to represent a residual unit. Tool and Die Union asserts the unit should be limited to tool-and-die workers. The Employer contends for an overall unit.

The Employer has eight permanent employees, of whom five are tool-and-die workers and three are production workers. Tool-and-die makers do production as well as tool-and-die work. All employees work closely together under the same supervision. Production workers may look forward to joining the journeyman rank with acquired abilities and experience. In view of the small size of the Employer's entire operation and the integration of operations, we find that a production and maintenance unit is appropriate.

At the time of the hearing, there were two temporary employees at work. One was a college student hired for the summer vacation, the other was hired for a particular short-term job. At the hearing in June, an employer witness testified that both of these employees would be discharged in July. As temporary employees, we shall exclude them from the unit.²

We find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within Section 9(b) of the Act:

All production and maintenance employees at the Employer's plant in San Francisco, California, including tool-and-die makers and machinists, but excluding temporary employees, office clerical and plant clerical employees, professional employees, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

¹ Piasecki Aircraft Corporation, 123 NLRB 348, 363-365

² Belcher Towing Company, 122 NLRB 1019. Continental Baking Company, 122 NLRB 1074