except to the extent that such rights may 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 National Labor Relations Act, as amended.

All our employees are free to become or remain or to refrain from becoming or remaining members in good standing of International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, AFL–CIO, or any other labor organization.

JEFFERSON WIRE AND CABLE CORP.,
Employer.

Dated_____ By_____
(Representative) (Title)

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.

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, Boston Five Cents Savings Bank Building, 24 School Street, Boston, Massachusetts 02108, Telephone 223–3358.

The Wood, Wire and Metal Lathers International Union, Local Union No. 68, AFL–CIO *and* Drywall Steel Erectors, Inc. *and* Carpenters District Council of Denver and Vicinity, an affiliate of United Brotherhood of Carpenters and Joiners of America, AFL–CIO. *Case 27–CD–68. June 27, 1966*

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 Drywall Steel Erectors, Inc., herein referred to as Steel Erectors, or 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 Steel Erectors 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 Union Brotherhood of Carpenters and Joiners of America, AFL–CIO, herein referred to as Carpenters. A hearing was held before Hearing Officer J. Donald Meyer on October 19, 20, and 21, 1965. 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. Briefs were filed by the Employer, Respondent, and Carpenters 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 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:

I. THE BUSINESS OF THE EMPLOYER

Steel Erectors is a Colorado corporation engaged in the business of installing metal components to receive drywall surfaces and has received materials directly and indirectly from outside Colorado valued at more than $84,000 during 1965. It has a collective-bargaining agreement with the Carpenters.

State Lathing Co., Inc., herein referred to as State Lathing, is an employer engaged in the lathing and plastering business in Colorado. It has a collective-bargaining agreement with the Lathers.

Steel Erectors was formed on December 31, 1964, by stockholders of State Lathing, and on the same date entered into a collective-bargaining agreement with the Carpenters. Steel Erectors employed its first workmen in January 1965. The work of installing metal components to receive drywall surfaces was taken over by Steel Erectors on certain jobs which theretofore had been performed by lathers employed by State Lathing without any change made in the agreements between State Lathing and the drywall contractors.

On the basis of the foregoing and other factors in Case 27–CD–59, State Lathing and Steel Erectors were found to constitute a single employer, and the disputed work involved therein was awarded to employees of State Lathing who were employed as lathers.[1]

The instant case brings before us another stage of the dispute between the Employer and the Unions. The Employer contends that the two corporations can no longer be considered as a single employer because of a change in ownership in Steel Erectors which occurred after the February 18, 1965, 10(k) hearing upon which the Board based its previous decision.

The record shows that on or about March 6, 1965, Vernon L. Raymer and Vincent J. Ranieri each purchased 10 shares of stock for $1,000 a share and became, respectively, president and vice president of Steel Erectors. Raymer had previously been employed by State Lathing as a field superintendent and Ranieri had been employed by the same company, apparently as a lather. The other two stockholders of Steel Erectors are Donald L. Keim, who owns two shares and who is also a stockholder and officer in State Lathing, and Ila Owens who owns three shares.[2] These two individuals received their

[1] *Wood, Wire and Metal Lathers International Union, Local Union No. 68 (State Lathing Co.)*, 153 NLRB 1189. On July 19, 1965, the Employer filed a motion for rehearing on the basis of events which it alleged had developed subsequent to the February 18, 1965, 10(k) hearing in the above case. On August 27, 1965, the Board denied the motion

[2] Ila Owens is the wife of Gurley Owens and received her three shares of stock without the knowledge of Raymer and Ranieri.

shares of stock directly from Steel Erectors, without giving any monetary consideration therefore. Two former stockholders, Mrs. Donald L. Keim and Dorothy Larsen relinquished their shares of stock. The record does not show whether they received any compensation therefor; it does show that Raymond and Ranieri did not purchase their shares from them, but purchased their shares directly from Steel Erectors.

Gurley Owens, the former general manager of the corporation, is now employed by Steel Erectors in the capacity of sales representative with the duty of contracting customers and promoting public relations. Although the Employer contends that Owens no longer is a dominant influence in Steel Erectors operations, the record shows that he negotiates contracts and otherwise remains a dominant factor in the operation of the business. He is one of the required cosigners of checks issued by Steel Erectors. Owens was the one who, on his own initiative, ordered Steel Erectors' employees off the job in dispute herein. Owens remains as the general manager of State Lathing, which corporation has not been dissolved. After the above change in the ownership of Steel Erectors, that Company took over certain contracts which State Lathing had been performing, such as the John F. Kennedy High School, Denver, and the College Center and Women's Dormitory, both in Greeley, Colorado. On these jobs the lathers who had been employed by State Lathing continued to work on the job and were paid by checks issued by Steel Erectors. On the John F. Kennedy High School project, lathers were paid on State Lathing checks until mid-June and used tools and equipment belonging to both companies. It appears that with respect to State Lathing projects in which work was in progress Steel Erectors merely took over the existing contracts and continued to employ lathers. However, with respect to other contracts obtained by Steel Erectors, it followed a policy of assigning the work to carpenters.

On the basis of all the foregoing, we find that, notwithstanding the investment of Raymer and Raineri in Steel Erectors and their assumption of the two top offices of that corporation, Steel Erectors and State Lathing continue to function as a single integrated enterprise.[3] Accordingly, we find that these two corporations still constitute a single employer within the meaning of Section 2(11) of the

[3] During the hearing Respondent served *subpoenas duces tecum* on Raymer and Keim requiring the production of all financial books and records and all contracts and payroll records of the concern since January 1, 1965. The Employer filed a motion to revoke the subpenas which the hearing officer granted subsequent to the hearing The hearing officer stated that he was granting the motion to revoke because, in his view, the Board's prior determination that State Lathing and Steel Erectors are a single employer was dispositive of the issue and since evidence in the record herein shows that State Lathing has not been dissolved or gone through bankruptcy, the relationship between the two companies is well established and is no longer germane to the present proceeding In view of our disposition of the single employer issue we find no prejudice to Respondent in such action.

Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS INVOLVED

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

III. THE DISPUTE

A. *The work in issue*

The work in dispute herein is the installation of metal hanger wires, carrying channels, and furring channels which are to receive drywall on the soffit[4] and vertical portions of false beam ceiling sections.

Background

The record in the instant case shows that State Lathing has never employed carpenters for any of its work. Immediately prior to and subsequent to the formation of Steel Erectors,[5] State Lathing was performing the work in dispute on various projects in addition to the installation of metal components to receive drywall on interior partitions.

The particular dispute involved herein arose over the reassignment of the disputed work on an addition to the Montgomery Ward store at the Villa Italia Shopping Center in Jefferson County, Colorado. Valentine Decorating Company had been awarded the contract for the performance of the disputed work and commenced work on July 27, 1965, using two lathers to perform the work. On July 29, 1965, Valentine assigned the work to Steel Erectors and paid off the lathers. The following morning, Steel Erectors began working on the job with four carpenters. On the same morning, the Lathers set up a picket line and carried picket signs which read: "DryWall Steel Erectors refuse to comply with NLRB Decision—Lathers Local No. 68." As a result of the picket line, Gurley Owens, after consultation with the other contractors on the project, voluntarily took Steel Erectors employees off the job.

B. *Contentions of the parties*

Respondent contends that, as the work involved on the Federal Center Building, one of the jobs on which the dispute involved in the *State Lathing* case arose, also included the installation of metal com-

[4] Soffit is the term applied to the horizontal surface of a "false beam" ceiling False beam ceilings must be constructed to hide pipes or heating ducts which traverse a room just below ceiling height.

[5] See *Wood, Wire and Metal Lathers International Union, Local Union No. 68 (State Lathing Co.)*, 153 NLRB 1189.

ponents for soffit and vertical portions of false beam ceiling sections as well as for interior partitions, the Board's prior determination in that case also awarded the work in dispute herein to lathers. It bases this contention on the fact that the award extended beyond the Federal Center project to all jobs being performed by or which might be awarded to the Employer in Denver, Colorado, and vicinity. The Respondent further contends that the original assignment and its collective-bargaining agreement with the Employer support its claim to the disputed work.

The Employer and the Carpenters contend that the Board's prior award is limited to the erection of metal components for interior partitions and does not encompass erection of such components for soffit and vertical positions of false beam ceilings. They rely on the carpenters' skills for the work involved, their collective-bargaining agreement, industry practice, and operating efficiency to support the Employer's assignment of the work to carpenters.

C. *Applicability of the statute*

The charges filed herein allege a violation of Section 8(b)(4)(D) of the Act. The record shows, and the Respondent does not deny, that it threatened to and did stop work in order to force Steel Erectors to use lathers rather than carpenters on the Villa Italia Shopping Center job. The Respondent, however, contends that its action was not in violation of Section 8(b)(4)(D) of the Act and that its action was based entirely upon Steel Erectors failure to comply with the Board's Order in the prior case. We find that the work in dispute herein was not specifically covered in the Lathers' agreement, or specified in the Board's determination in Case 27–CD–59. The work in dispute therein was the erection of all metal components which are installed to receive drywall on *interior partition* [emphasis supplied]. Here, however, we find that the work in dispute although closely related, was not alleged in the complaint or mentioned in the prior hearing and therefore was not included in the prior determination. Accordingly, we find Respondent's contention to be without merit.

We therefore 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.

D. *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 the 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

Steel Erectors and Carpenters have a contract which they claim, and for the purpose of this case we assume, assigns the work in dispute herein to employees represented by the Carpenters.

Respondent contends that its contract with State Lathing assigns the work in dispute herein to its members. In the previous case, however, we found that the same contractual language did not specifically assign the work in dispute therein. Accordingly we find that this language does not specifically assign the work in dispute herein to members of Respondent.

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

2. Company, area, and industry practice

Both Unions offered evidence on area and industry practice; such evidence, however, was general and inconclusive and does not disclose a controlling practice. As has already been noted, the Employer's past practice has been to assign the work in dispute herein to lathers under its collective-bargaining agreement with Respondent.

The record herein shows that the Employer, even after the formation of Steel Erectors and its collective-bargaining agreements with the Carpenters, continued to employ lathers on projects currently under construction. Indeed, on certain jobs, the record shows that Steel Erectors took over work which was being performed by State Lathing and continued to employ the very same lathers who had been employed by State Lathing. The Employer's most recent assignment of the work to carpenters, 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 in dispute in the instant case. The record indicates that the skill required to install the metal hanger wires, carrying channels, and furring channels on the soffit and vertical portions of false beam ceiling sections is the same whether they are to receive a dry plaster wall surface or some other surface. The record further shows that from the standpoint of efficiency the assignment of the work favors neither craft.

4. Action of the Joint Board

Steel Erectors, the Charging Party, is not a party to an agreement binding it to accept decisions of the National Joint Board for the Settlement of Jurisdictional Disputes, and this dispute was not submitted to the Joint Board. The parties stipulated that there is no agreed-upon method for settling the dispute. The record herein shows that the Joint Board is presently studying the question of the Lathers and Carpenters Unions' jurisdiction over work of this nature.

CONCLUSION

Upon consideration of all the 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, although employed by an employer not involved herein, started to perform the work in dispute on the project directly involved. The Employer employs lathers and has a collective-bargaining agreement with Respondent Lathers. Assignment of the work to lathers is not inconsistent with area and local industry practice. It is consistent with the Employer's past practice and with the collective-bargaining agreement between the Lathers and the Employer under which lathers had performed the work in question, until the Employer recognized the Carpenters, and substituted carpenters for lathers on new projects not already under construction at the time of our decision in the *State Lathing* case, *supra*. In these circumstances, we find that it would upset the stability of the existing collective-bargaining relationship between the Employer and the Respondent were we to honor the Employer's assignment of the work in dispute to 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 performed 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 the Employer, 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 installing metal hanger wires, carrying channels, and furring channels to receive drywall on soffit and vertical portions of false beam ceiling sections on the addition to the Montgomery Ward store at the Villa Italia Shopping Center, and on all other jobs being performed by, or which may be awarded to, the Employer in Denver, Colorado, and vicinity.

Local 825, International Union of Operating Engineers, AFL–CIO, and Peter Weber, President and Business Manager *and* Utilities Line Construction Co., Inc. *Case 4–CD–147. June 27, 1966*

DECISION AND DETERMINATION OF DISPUTE

This is a proceeding pursuant to Section 10(k) of the National Labor Relations Act, as amended, following a charge filed by Utilities Line Construction Co., Inc.,[1] alleging a violation of Section 8(b)(4)(i) and (ii)(D) of the Act by Local 825, International Union of Operating Engineers, AFL–CIO,[2] and Peter Weber, president and business manager. The charge alleges, in substance, that the Operating Engineers had induced and encouraged employees to cease work and had threatened, coerced, and restrained the Employer, the aforementioned employees, and other persons with an object of forcing or requiring the Employer to assign particular work to employees represented by the Operating Engineers rather than to employees represented by Local 358, International Brotherhood of Electrical Workers, AFL–CIO.[3] Pursuant to notice, a hearing was held before Hearing Officer Robert D. Kaplan of the National Labor Relations Board, on March 10 and 16, 1966. 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. The Employer and Local 358 filed briefs which have been duly considered. The Operating Engineers did not file a brief.

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-

[1] Herein called Utilities Line or Employer.
[2] Herein called Operating Engineers or Local 825.
[3] Herein called Local 358.