WE WILL NOT threaten employees that, if the Union comes in, we will "integrate" the plant, or permit Negro employees to work together with white employees in the same functions and departments.

WE WILL NOT discourage membership in the above-named or any other labor organization by changing our vacation policy or practices or by changing the employees' work rules, or in any other manner discriminate in regard to hire or tenure of employment or any term or condition of employment.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of their right to self-organization, to form labor organizations, to join or assist the above-named, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in any other concerted activity for the purpose of collective bargaining, or other mutual aid or protection, or to refrain from any and all such activities.

WE WILL upon request, bargain collectively with the above-named Union as the exclusive bargaining representative of all employees in the bargaining unit with respect to rates of pay, wages, hours of employment, and other conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All production and maintenance employees at the Pine Bluff, Arkansas, plant, excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act

VIKING BAG DIVISION, SHURFINE-CENTRAL CORPORATION,
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, 746 Federal Office Building, 167 North Main Street, Memphis, Tennessee 38103, Telephone 534–3161.

Brewery Workers Local Union No. 3, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America *and* Rheingold Breweries, Inc. *and* Local 56, International Brotherhood of Firemen, Oilers, and Maintenance Mechanics, AFL–CIO. *Case 29–CD–28. October 31, 1966*

DECISION AND DETERMINATION OF DISPUTE

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following charges filed by Rheingold Breweries, Inc., herein referred to as Rheingold or the Employer, alleging that the Brewery Workers Local Union No. 3, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein referred to as Local No. 3 or the Respondent, had induced and encouraged employees of Rheingold to strike for the purpose of forcing or requiring the Employer to assign particular work to members of Local 3 rather than to members of Local 56, International Brotherhood of Firemen, Oilers, and Maintenance

Mechanics, AFL–CIO, herein referred to as Local 56. A hearing was held before Hearing Officer Stephan A. Weiss on July 1, 1966, at Brooklyn, New York. All parties appeared at the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence on the issues. The rulings of the Hearing Officer made at the hearing are free of prejudicial error and are hereby affirmed. The parties did not file briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, 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

Rheingold is a New York corporation engaged in the brewing, sale, and distribution of beer and related products. It maintains an office and place of business in Brooklyn, New York, herein called the Brooklyn plant, which produces products valued in excess of $50,000 which are shipped from said plant in interstate commerce.

We find that the Employer has been at all times material herein engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated that Local 3 and Local 56 are labor organizations within the meaning of Section 2(5) of the National Labor Relations Act.

III. THE DISPUTE

A. *The work in dispute*

The work in dispute is the initial painting of the outside surfaces of new large steel storage tanks, and the insulated walls and new structural beams located in what formerly was a racking room of the Company which is being converted into a "government cellar" for the storage of beer.

B. *The basic facts*

The work in dispute is located in the main brewing building in Rheingold's Brooklyn plant. Prior to the time Rheingold decided to install a new government cellar in the main brewing building, it had used the area as a racking room where beer was stored in barrels for shipment. In the government cellar, the beer is stored in large steel tanks prior to its being pumped into barrels or processed into cans or bottles.

To convert the racking area into a government cellar, it was necessary to install new beams for the purpose of supporting the tanks, and to insulate a portion of the room's walls. The two new steel storage tanks were constructed elsewhere in the plant and moved to the government cellar area. In order to transfer the tanks into the government cellar, the walls of the room had to be removed. Once the tanks were installed, the walls were repaired and reinforced with large structural beams. Four layers of brick were used in the reconstruction of the brick walls for approximately 4 feet above the floor. Above that point two layers of brick and insulation were installed.

The dispute involves only the painting of the prime coat on the outside surface of the new steel storage tanks, the initial painting of the insulated portions of the reconstructed walls, and the initial painting of the new beams used to reinforce the walls. Local 56 asserts that it only claims the initial painting work and that it does not seek jurisdiction over future repainting of these surfaces.

Separate collective-bargaining agreements are in effect between the Employer and these two unions. In these agreements the parties have attempted to define the jurisdiction of each union with respect to painting in the Brooklyn plant. The agreement in effect between Local 56 and the Brewers Board of Trade, Inc., of which Rheingold is a member, provides that, " . . . the Employer will employ only employees represented by Local 56 to do the painting and other work done by members of Local 56 in the last prior agreement."

The pertinent clause in the Local 3 contract provides that:

> Employees shall continue to perform the maintenance, painting and wooden cooperage duties which they customarily performed in their respective department in their respective plants . . . All painting of equipment and surrounding departmental areas in the Brewing and Bottling Departments shall be performed by employees in the respective departments provided that the performance of such work does not impinge upon the jurisdiction of other unions whose members are employees of the Employers and provided further that the present practice respecting new construction painting shall be continued.

In an attempt to further define "present practice respecting new construction" in the Local 3 agreement, the vice president of Rheingold wrote a letter in 1952 to the business agent for Local Union No. 69 of the Brewery Workers (the predecessor to Local 3) stating that:

> . . . it will be the policy of Rheingold to assign members of Brewers Union Local 69 to all painting operations with respect

to the present structure and equipment of the Brewing Department with the following exceptions:

Electric Motors
Pumps and their automatic controls
Sweet Water Rooms with their present equipment
Open conveyors
Drivers

At the time Local 3 members were preparing the beams in the converted government cellar for painting, the business representative for Local 56 contacted the vice president of industrial relations of Rheingold and stated that on the basis that the conversion of the racking room to a government cellar was new work, Local 56 had jurisdiction over it, and that if Local 3 were allowed to continue performing the new work, Local 56 would engage in a work stoppage. Subsequently, all of the parties met and each local claimed the painting as a matter of past practice. Rheingold had no preference as to which union performed the work in question. Subsequently, Local 56 appealed the disputed painting work to arbitration pursuant to its contract with Rheingold. The pertinent section of that contract follows:

> In the event that a dispute should arise during the term of this Agreement, between any other Union having a legitimate contract with the Brewers Board of Trade, Inc., and Local 56, then the dispute shall be referred in the first instance to the business representatives of the respective local unions involved for settlement. If the business representatives fail to reach a settlement within ten days, then the matter shall be referred to arbitration in accordance with the Voluntary Arbitration Tribunal of the American Arbitration Association. The arbitrator shall be selected only by the two Unions involved in the dispute and he shall be a person acceptable to both of them. Pending the final determination of such dispute, the status quo ante shall be maintained.

Local 3 was not a party to the arbitration, and took the position that they would not be bound by any award since there was no contractual provision in either the Local 3 or Local 56 contracts for arbitration without the consent of all interested parties. Local 3 advised Rheingold that if the painting work in dispute were assigned to Local 56, Local 3 would engage in a work stoppage. Rheingold thereupon filed the instant 8(b)(4)(D) charge. Although there has been no actual work stoppage by either union, Rheingold has held up the initial painting of the government cellar until the dispute is resolved.

C. *Contentions of the parties*

Local 3 alleges that a proper construction of its contract and the letter referred to above, particularly in view of the past practice of the Employer in assigning new painting work to members of Local 3, requires the conclusion that the painting of all brewery house structures and equipment, whether old or new, in buildings or areas presently in use, is within the jurisdiction of Local 3 members. It contends that the 1952 letter was intended to insure only that Local 3 would not claim jurisdiction over the painting done by outside contractors on new buildings.

Local 56 also contends that its members have customarily been assigned new painting work in the plant, and since it is stipulated that the contested structure and equipment are new, the work properly belongs to its members. Although Local 56 contends that it is not bound by the 1952 letter between Rheingold and Local 3, it alleges that a literal construction of the letter indicates only that Rheingold intended to grant to Local 3 jurisdiction over painting of existing present structures and equipment, and not new structures installed in the plant.

D. *Applicability of the statute*

In a proceeding under Section 10(k) of the Act, the Board is only required to find that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated before making a determination of the dispute out of which the alleged unfair labor practice has arisen. Accordingly, we find that there is reasonable cause to believe, from the work here in issue to Respondents' members rather than to the coerced, and restrained Rheingold in an attempt to force it to assign the work here in issue to Respondent's members rather than to the members of Local 56. We accordingly conclude that there is reasonable cause to believe that Section 8(b)(4)(D) of the Act has been violated, and that this dispute is properly before us 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 the various relevant factors disclosed by the evidence.

1. Existing contracts and other agreements

It is clear from the record that the parties are not in agreement over the meaning of the pertinent terms of their collective-bargaining agreements and the allegedly explanatory 1952 letter, and that the Employer has not consistently construed and applied the terms of

these agreements in instances where disputes have arisen in the past between these two unions. Although the 1952 letter evidences an attempt by Rheingold and Local 3 to define Local 3's jurisdiction with regard to painting work in the brewery, its language, as well as the language in the basic agreements, is sufficiently ambiguous to create controversy over its interpretation and applicability to particular work disputes. In fact, this controversy has arisen over the applicability of the terms of these agreements to this dispute. Thus, although the agreements involved herein have been utilized by the parties in defining the jurisdiction of the two unions in many instances, they are not sufficiently clear to be dispositive of the issue herein.

2. Classification of employees and emyloyees' skills

The record indicates that there are no special skills required for the initial painting of the structure and equipment contained in the new government cellar, and that both the members of Local 3 and Local 56 can equally perform the disputed work.

3. Custom and past practice

The record indicates that ordinarily all painting work in the brewery, including the installation of new structures and equipment, has been assigned to members of Local 3. In a few instances, Rheingold assigned certain initial painting work in the brewery to members of Local 56, or to outside contractors; however, upon the protest of Local 3, the record indicates that generally the painting work was reassigned to the members of Local 3.

In one dispute in 1962, the work involved was essentially similar to the disputed work in this instance. Rheingold at that time installed a government cellar in another plant which required the installation of large steel tanks and the destruction and subsequent rebuilding of the walls to the room with structural supporting beams. Rheingold assigned the initial painting work to members of Local 3, and Local 56 protested the assignment of the work and engaged in a work stoppage. The issue of the work stoppage was brought to arbitration pursuant to an emergency arbitration agreement, and the arbitrator ordered the Local 56 members back to work. The Local 3 members were permitted to complete the painting of the new government cellar, and although Local 56 indicated that it intended to arbitrate the work assignment issue, it never brought it to arbitration. In another instance, apparently in 1964, Rheingold installed a new automatic room for pumping keg beer designated as a keg beer control room. A great deal of new structural work was done, including the building of new walls and ceiling, and new structural beams to support the tanks. As in the above-noted instance,

the job of painting the room and equipment was assigned to the members of Local 3.

Local 56 alleges that in three instances its members have been assigned the job of painting new equipment installed in the brewery. It claims that in 1959 its members painted new acetylene tanks which were installed in the brew house; however, Local 3 alleges that it objected to the assignment, and that, subsequently, the painting of these tanks was reassigned to its members. Local 56 alleges that in 1960 its members were assigned the work of painting a new air tank in the filter celler. Local 3 did not dispute this allegation. Lastly, in 1964, Rheingold assigned the initial painting of a new solution tank in the brew house to members of Local 56. Although Local 56 acknowledges that Local 3 protested the assignment, it claims that it completed the initial painting job. Local 3 contends, however, that the painting job was completed by its members.

Conclusion

Upon consideration of all the evidence in this proceeding, we shall assign the work in dispute to the members of Local 3. This conclusion is based primarily on the past practice of the Employer in making such assignments, including particularly its past assignments made with respect to the construction of a government cellar in 1962, and in addition, upon the collective-bargaining agreement and the 1952 letter which may reasonably be construed to grant to members of Local 3 initial painting work in the brewery. However, in view of the fact that the language in these agreements is ambiguous, we are not making a broad assignment of all initial painting work to be done in the brewery to Local 3, but are limiting such assignment to the particular painting job where the instant dispute arose. In making this determination, we are assigning the disputed work to the employees of the Employer who are represented by Local 3, 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:

Brewery workers employed by the Employer, who are represented by the Brewery Workers Local Union No. 3, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, are entitled to perform the work of initially painting the outside surfaces of the steel storage tanks, the insulated walls, and structural beams in the new government cellar in the Employer's Brooklyn plant.