

In the Matter of AMERICAN OPTICAL COMPANY, EMPLOYER and OPTICAL
AND INSTRUMENT WORKERS ORGANIZING COMMITTEE, C. I. O.,
PETITIONER

Case No. 15-RC-93

SUPPLEMENTAL DECISION

AND

ORDER

February 1, 1949

On August 20, 1948, the Board issued a Decision and Direction of Election in the above-entitled case, directing an election to determine whether or not the employees in the unit found appropriate therein desired to be represented by the Petitioner for the purposes of collective bargaining. On October 13, 1948, the Board, on its own motion, stayed further proceedings and ordered the record reopened and the case remanded to the Regional Director for further hearing to determine the relationship between the Petitioner and the Congress of Industrial Organizations, herein called the C. I. O. Accordingly, a further hearing was held at New Orleans, Louisiana, on November 15, 1948, before C. Paul Barker, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.¹

Upon the entire record in this case, the Board ² makes the following:

SUPPLEMENTAL FINDINGS OF FACT

In this case, as in the earlier *Northern Virginia Broadcasters* case,³ our task is to determine whether the petitioning labor organization which has itself complied with the requirements of Section 9 (f), (g),

¹ At the beginning of the hearing, the Petitioner objected to the hearing on the ground that the Petitioner's eligibility for certification is a matter for administrative determination. The Petitioner also moved for dissolution of the stay order and for the effecting of the Direction of Election. The Employer took no position. The hearing officer denied the Petitioner's motion. We are of the opinion that the hearing officer's ruling did not prejudice the rights of any of the parties.

² The Board previously delegated its powers with respect to this case to a three-man panel. In view of the importance of the question which has subsequently arisen, we deem it advisable to have the full Board consider the issue. Accordingly, we hereby unanimously revoke the said delegation of powers.

³ *Matter of Northern Virginia Broadcasters, Inc., Radio Station WARL*, 75 N. L. R. B. 11.

and (h) of the Act, as amended, may invoke the jurisdiction of the Board in the absence of compliance with these requirements by the parent federation of which it is a part. In the cited case, we decided that the Act did not prohibit us from investigating questions concerning representation raised by complying national and international unions affiliated with the two great parent federations (the CIO and the AFL), neither of which was then in compliance with the requirements of Section 9 (f), (g), and (h). We now have before us a case in which the petitioning labor organization, Optical and Instrument Workers Organizing Committee, C. I. O., is an *organizing committee* of the CIO rather than a national or international union. As noted above, it is in compliance; the CIO's officers are not. Our ultimate decision in this case must turn on the relationship existing between the Petitioner and the CIO. We have therefore inquired into this relationship. Our inquiry reveals the following facts:

In 1942, several "local industrial unions" in the optical industry, which had previously been chartered directly by the C. I. O., amalgamated under the aegis of the C. I. O. to form the Petitioner. The Petitioner has no constitution or by-laws of its own, but is governed by those of the C. I. O. Its policies are determined by an Executive Board composed of a chairman, a secretary, a treasurer, and four representatives.⁴ The chairman was appointed by the C. I. O. His salary is paid by his local, of which he is president, and his expenses are paid by the C. I. O. The secretary and the treasurer were both appointed by the Petitioner's chairman.⁵ Of the four representatives, one was appointed by the Petitioner's chairman, spends his full time on business of the Petitioner, and has his salary paid by the Petitioner. The other three are "on loan" to the Petitioner from the C. I. O. Their salaries are paid by the C. I. O. They spend full time on the Petitioner's business and are under the orders of the Petitioner's chairman.

The C. I. O. constitution, which was submitted in evidence, indicates that in some respects, organizing committees are treated the same as are national and international unions.⁶

The Petitioner issues charters to locals in its own name. The locals collect dues and pay a per capita tax to the Petitioner's treasury. In turn, the Petitioner sends per capita taxes to the national

⁴ The Petitioner also has a Board of Directors, separate from the Executive Board, which is composed of the Executive Board members and some others.

⁵ The secretary's expenses are paid by the Petitioner.

⁶ Art III, Sec 1 of the Constitution of the Congress of Industrial Organizations (1946) provides: "This Organization shall be composed of affiliated national and international unions, organizing committees, local industrial unions and industrial union councils."

Art III, Sec 2 provides that the Executive Board shall charter national and international unions and organizing committees. Art III, Sec 6 provides the same rules for suspension and expulsion of organizing committees as it does for national and international unions. Art. VII, Sec. 5 and 6 provide for similar representation in conventions, and Art. VII, Sec 1 imposes the same per capita tax on organizing committees as on national and international unions.

C. I. O. and contributes its pro rata share to the C. I. O. Southern Organizing Committee.⁷ These contributions by the Petitioner are paid on the same basis as those paid by international unions affiliated with the C. I. O.

The Petitioner maintains its own office, clerical help, and bank account, and sends delegates to C. I. O. conventions on the same basis as international unions affiliated with the C. I. O. The Petitioner also holds conventions.⁸ Members of the Petitioner's locals are given membership cards made out in the Petitioner's name.

Collective bargaining contracts are subject to the approval of the local membership and are executed in the name of both the local and the Petitioner. Strikes must be approved by the members of the local concerned, subject to ratification by the Petitioner's chairman.

CONCLUSION

The foregoing facts relative to the Petitioner's internal structure and its relationship with the C. I. O. reveal at least two major differences between this *organizing committee* and the international unions referred to in the *Northern Virginia Broadcasters* case which, in our opinion, establish that the Petitioner does not possess the independent status and autonomy enjoyed by these international unions. These differences, discussed below, show that the C. I. O. retains greater control over the Petitioner than it does over its international unions.

1. The Petitioner, unlike an international union, has no separate constitution or bylaws, but operates under the constitution and bylaws of the C. I. O. Thus, the Petitioner is not a complete and independent entity. It lacks the ability to formulate and change its own constitution and bylaws. The parent federation retains the power to destroy the Petitioner completely by merely declaring the Petitioner dissolved. In this respect, the Petitioner more nearly resembles a "federal" or "industrial" union chartered directly by a parent federation, rather than a self-sufficient "national" or "international" union. It lacks the insulation which normally exists between a parent federation and a full-fledged international union.

2. The Petitioner, unlike an international union, does not elect its own officers. Its destiny is entrusted to a C. I. O.-*appointed* chairman and officers and representatives *appointed* by him or "on loan" from the C. I. O. Implicit in the power to appoint is the power to revoke; therefore the C. I. O. can revoke the chairman's appointment and recall the representatives "on loan" and the chairman can, at will, remove the other officers. In short, the C. I. O. directly controls four

⁷ A representative of the C. I. O. Southern Organizing Committee, whose salary is paid by the C. I. O., has aided the Petitioner in organizing, and has rendered similar services to other unions affiliated with the C. I. O. in the South.

⁸ The last national convention of the Petitioner was held in 1947.

of the seven members of the Executive Board⁹ and, through its control of the chairman, indirectly but no less effectively controls the other three.¹⁰ The opportunities for the parent federation to impose its will on the Petitioner are obvious. Under such circumstances, it cannot be said that the Petitioner retains a substantial amount of independence; rather it is a subordinate division or agency of the C. I. O.

As stated in the *Northern Virginia Broadcasters* case, the fundamental purpose of Congress in enacting Section 9 (h) was to eliminate Communist influence from the labor movement in this country. The *method* chosen to achieve this purpose was to deny the use of the Board's machinery to any union, unless non-Communist affidavits were filed by those officers who controlled the union's destiny.¹¹ We believe that this section of the Act requires compliance not alone by the Petitioner's officers, but likewise by the officers of the C. I. O., which unquestionably has power to control the policies of the Petitioner.

We strongly reject the suggestion of our dissenting colleagues that in this case we are "departing from the principle" of the *Northern Virginia Broadcasters* case. Clearly, the disagreement between us is only with respect to the *application* of the principles of that decision to the facts now before us. On that score, we are somewhat amazed at our dissenting colleagues' delineation of factors deemed "insubstantial" as contrasted with those "more persuasive" for determining whether the Petitioner is really like or unlike an international union in being "sufficiently insulated from domination and control" by the C. I. O. In our opinion, the ultimate question is whether the Petitioner is "self-governing."¹² To our mind, controlling weight cannot be given to the factors that the Petitioner issues charters to locals and collects taxes from them, that it has offices and a bank account, contributes to the finances of the C. I. O., sends delegates to C. I. O. conventions, executes contracts and calls strikes, and holds conventions. We have not been apprised what *does* take place at the Petitioner's conventions, but the fact remains that its members

⁹ The chairman and the three loaned representatives. In addition to control of their tenure, the C. I. O. controls their compensation by paying the chairman's expenses and the representatives' salaries.

¹⁰ The secretary, the treasurer, and one representative. Moreover, the chairman also directs the activities of the three loaned representatives.

¹¹ As we pointed out in the *Northern Virginia Broadcasters* case, the motive for failure to sign such affidavits is immaterial; the sole question is the existence or non-existence of the obligation to do so. *Matter of Northern Virginia Broadcasters, Inc., Radio Station WARL*, *supra*, at page 15

¹² In *United States Gypsum Company*, 81 N. L. R. B. 292, we reopened the record as we did in this case, and for the same reasons; there to determine the status of the United Paperworkers of America, C. I. O. We found that prior to October 18-21, 1948, that organization had operated as an organizing committee with officers and Executive Board appointed by the C. I. O. But on those dates it held a convention at which it adopted a constitution under which the convention was the supreme governing body and pursuant to which it elected its own officers. Accordingly, the Board unanimously found that the Paperworkers was a "self-governing international union affiliated with the C. I. O. as a parent federation." [Emphasis supplied.]

have never exercised democratic rights which are indispensable to self-government, such as the rights to adopt and change their own constitution¹³ and to elect their own officers. That the Petitioner performs certain functions also performed by self-governing labor organizations is not of controlling importance on the issue before us. What is decisive is the fact that another organization has the *power to control the performance* of those functions because it has the power to appoint and remove the responsible officers of the Petitioner. The argument of the dissenters that this is of no consequence because an officer of an affiliated international union who is also an officer of the parent federation could likewise easily impose the will of the federation on his own affiliate, completely overlooks the fundamental difference in the two situations. Officers of international unions are accountable to the members who have the power to elect them; the members may *remove* them when dissatisfied with their policies. Officers of the Petitioner, however, are accountable to the C. I. O. which has the power to appoint and remove them; they are *not* removable by the members should the latter disagree with their officers' policies.

We conclude that, under the circumstances of this case, the C. I. O. must be regarded as a "national or international labor organization" rather than as a parent federation in its relation to this Petitioner, within the meaning of Section 9 (f), (g), and (h) of the Act;¹⁴ and that, therefore, the Petitioner may not invoke the jurisdiction of the Board until the C. I. O. itself has complied with the filing requirements of the Act.¹⁵ Accordingly, we shall set aside the Direction of Election and dismiss the petition.

¹³ That all international unions affiliated with the C. I. O. operate under its constitution and may be suspended or expelled by the C. I. O. is no answer to the fact that Petitioner had no constitution of its own, as our dissenting colleagues seem to think. The C. I. O. constitution is basically the constitution of a parent federation whose constituent international unions each have their charter of rights providing self-government, in their own constitutions. If the federation expels an international union, such action leaves unaffected the latter's autonomy and independence based upon its own constitution. In contrast, should the C. I. O. expel an organizing committee (of course withdrawing officers previously provided by the C. I. O.), such action would have the effect of dissolving it. Although the separate locals might continue in existence, there would not be any international entity remaining with an organic law and officers.

¹⁴ That a parent federation may be a "labor organization" within the meaning of Section 2 (5) of the Act, and a "national or international labor organization" under Section 9 (f), (g), and (h), under certain circumstances, is clear. See *Matter of S. W. Evans & Son*, 75 N. L. R. B. 811; and *Matter of American Fruit Growers Incorporated*, 75 N. L. R. B. 1157. And it was pointed out in the *Northern Virginia Broadcasters* case that, in certain situations, a parent federation "actually stands in the position of an international union." (Italics supplied.) *Matter of Northern Virginia Broadcasters, Inc., Radio Station WARL*, *supra*, page 17, footnote 1.

¹⁵ Our conclusion in this respect, however, is not to be construed as indicating that we view the Petitioner (which has been in existence for 6 years) as a device *designed* to evade the filing requirements of the Act. We recognize that organizing committees are a usual technique for organizing new industries and an interim form of organization used until conditions are deemed appropriate to charter an independent international union. But the fact that an organizing committee may *become* an international union at some future time does not alter the fact that at the present time it lacks the independent status of an international union. In our view, no other conclusion than we have reached is possible when the Act is applied to the present state of facts.

ORDER

Upon the basis of the above supplemental findings of fact, the National Labor Relations Board hereby vacates and sets aside the Direction of Election heretofore issued in this proceeding and hereby orders that the petition for investigation and certification of representatives of employees of American Optical Company, New Orleans, Louisiana, filed herein by Optical and Instrument Workers Organizing Committee, C. I. O., be, and it hereby is, dismissed.

CHAIRMAN HERZOG and MEMBER HOUSTON dissenting:

In the *Northern Virginia Broadcasters* case¹ the Board resolved a close question of statutory interpretation, giving great weight to what it considered to be the best means of effectuating the policy of Congress underlying Section 9 (h) of the amended Act. Viewing the parent organizations known as "nationals" or "internationals" as sufficiently insulated from domination and control by the great federations, the AFL and CIO, a majority of the Board in that case ruled that we would not require compliance by the latter organizations as a prerequisite to our entertaining proceedings initiated by nationals, internationals, or their locals. The issue here is whether the Petitioner is sufficiently like a national or international union to warrant similar treatment, insofar as the impact of non-compliance by the CIO's own officers is concerned. Admittedly there are *differences*; but we believe them to be so *insubstantial* as not to justify the different result reached by our colleagues. For us, the *similarities* are more persuasive.

The Petitioner, like nationals or internationals of the CIO, issues charters to locals, receives a per capita tax from these locals, contributes its pro-rata share to the finances of the CIO, maintains its own offices and bank account, has its own conventions, and sends delegates to the CIO conventions on the same basis as nationals or internationals. The Petitioner's charter from the CIO provides that it, and not the CIO, shall have exclusive jurisdiction "over all work relating to the optical industry"; and the Petitioner, and its locals, executes collective bargaining agreements and calls strikes without the approval of the CIO.²

Admitting these similarities between the Petitioner and national or international unions of the CIO, our colleagues nonetheless find

¹ *Matter of Northern Virginia Broadcasters, Inc., Radio Station WARL*, 75 N. L. R. B. 11.

² This is clearly distinguishable from the control which the AFL exercises over the collective bargaining agreements of certain of its direct affiliates (See *Matter of Rub-R-Engraving Company*, 79 N. L. R. B. 332), and also from the cases cited in footnote 12 of the majority opinion and such additional cases as *Matter of Noblitt-Sparks Industries, Inc.*, 76 N. L. R. B. 1230; *Matter of Bewley Mills*, 77 N. L. R. B. 774, fn. 11; *Matter of Dun & Bradstreet, Inc.*, 80 N. L. R. B. 56.

that because the Petitioner, whose officers are in compliance, has no separate constitution or bylaws, and does not elect its own officers, a compelling reason exists for departing from the principle of the *Northern Virginia Broadcasters* case. We cannot agree. Not only the Petitioner but *all* affiliates of the CIO, including international unions, operate "under the Constitution and bylaws of the C. I. O.,"³ and are subject to the same rules for suspension and expulsion.⁴ We perceive no realistic basis for the majority's concern for the supposed subjection of the Organizing Committee to the "will" of the CIO, merely because the CIO appoints or "loans" the Petitioner's officers. Surely an officer of an international or national who is also an officer of the parent federation could likewise easily impose the "will" of the parent federation upon the affiliate. But that, fortunately, did not deter a majority of the Board from holding as we did in the *Broadcasters* case. Indeed it was the very fact that the officers of the parent federations were for the most part also officers of national or international unions, that helped persuade us in 1947 that the purposes of Section 9 (h) could be best accomplished without requiring compliance by the parent federations themselves.⁵ So far as the particular issue before the Board is concerned, the manner in which the organizing committee's officers are selected is, we believe, a less compelling fact than others appearing in the record. We would therefore grant the Petitioner's motion for dissolution of the stay order, and proceed with the case on its merits.

³ Art. VI, Sec. 8 of the Constitution of the Congress of Industrial Organizations (1946) empowers the Executive Board to investigate "any affiliate on the ground that such affiliate is conducting its affairs and activities contrary to the provisions of the Constitution, and to make recommendations to the affiliate involved and to make a report to the convention." The 1947 CIO *Handbook*, p. 5, states that "The Constitution of the CIO is the supreme law governing all affiliates of the CIO."

⁴ See footnote 6 of the majority opinion. National and international unions and organizing committees may not be suspended or expelled except upon a two-thirds vote at the convention. Furthermore, even if the parent federation were to revoke the charter, the organization would still continue with "at least a *de facto* existence as a labor organization." *Matter of Lakey Foundry and Machine Company*, 70 N. L. R. B. 1068, 1074. "While refusal to abide by the jurisdictional rulings of the federated body means expulsion, it does not mean disintegration of the union itself . . ." Peterson, *American Labor Unions* (1945) p. 57.

⁵ In *Matter of Northern Virginia Broadcasters, Inc., Radio Station WARL*, 75 N. L. R. B. at 15, we said: "However, the members of these governing bodies [AFL and CIO] are, with few exceptions, likewise officers of the autonomous international unions. In the latter capacity they have a strong incentive to comply with Section 9 (h); if they fail to do so, their own internationals lose the benefits of the Act. It is at this point that the shoe will, and should, pinch any top leaders of labor who choose not to comply. But, absent any impressive evidence to the contrary, we question whether Congress intended to take the further step of letting the action of those international officers who happen also to be members of the governing body of a parent federation determine the fate of the members of a wholly different international labor organization all of whose local and international officers have complied in full. Control is too slight; the relationship is too remote."