

pressor to its members rather than to the Employer's own employees who were members of other labor organizations.

We are not, however, by this action to be regarded as "assigning" the air compressor work to members of any of the contract Unions.¹¹

Determination of Dispute

Upon the basis of the foregoing findings of fact, and upon the entire record in this case, the Board makes the following determination of dispute pursuant to Section 10 (k) of the amended Act:

1. International Union of Operating Engineers, Locals 17, 17A, and 17B, and Francis Cuffe, individually and as business agent for the said Locals, are not, and have not been, lawfully entitled to force or require Empire State Painting and Waterproofing Co., Inc., to assign air compressor work to their members rather than to the Company's employees who are members of another labor organization.

2. Within 10 days from the date of this Decision and Determination of Dispute, the Respondents shall notify the Regional Director for the Third Region, in writing, as to what steps the Respondents have taken to comply with the terms of this Decision and Determination of Dispute.

¹¹ *Los Angeles Building and Construction Trades Council, AFL (Westinghouse Electric Corporation)*, 83 NLRB 477.

THE D. M. BARE PAPER COMPANY *and* HUGH R. LOBB, PETITIONER *and*
UNITED PAPERWORKERS OF AMERICA, C. I. O., AND ITS LOCAL 415,
C. I. O. *Case No. 6-UD-2. June 30, 1952*

Decision and Order

Upon a petition duly filed under Section 9 (e) of the National Labor Relations Act, a hearing was held before William A. McGowan, 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 finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organization involved claims to represent employees of the Employer.

3. On November 2, 1951, the Employer executed a 1-year collective bargaining agreement with United Paperworkers of America, C. I. O.

¹ The request for oral argument by the Union is hereby denied, as the record and briefs, in our opinion, adequately present the issues and positions of the parties.

and Local 415, with a 60-day automatic renewal clause in the absence of notice to change or terminate the agreement.² This agreement contained a clause requiring as a condition of continued employment that all present and future employees become members of the Union immediately following the 30th day after the effective date of the agreement or the beginning of their employment, whichever is later. The petition seeks an election to rescind the Union's authority to contract for a union-security clause.

Under Section 9 (e) (1), as recently amended,³ the Board is required to direct such an election where a petition requesting it is filed with the Board "by 30 per centum or more of the employees in a bargaining unit covered by an agreement between their employer and a labor organization made pursuant to section 8 (a) (3)." The question which arises in this case is whether the petition satisfies the statutory requirement that the agreement covering the bargaining unit be "made pursuant to section 8 (a) (3)" of the Act.

Section 8 (a) (3), as recently amended, sanctions a union-security clause of the type here involved provided that, among other things, "at the time the agreement was made or within the preceding twelve months [the contracting union] has received from the Board a notice of compliance with section 9 (f), (g), and (h)" of the Act. Local 415, one of the contracting parties, was not in compliance with Section 9 (f), (g), and (h) of the Act either at the time of the execution of the agreement or at any time during the preceding 12 months, and had not come into compliance prior to the filing of the original petition herein. It is obvious therefore that the union-security clause in this case was not made pursuant to Section 8 (a) (3), and that one of the necessary requirements for the direction of a deauthorization election, as set forth in Section 9 (e) (1), has not been met. Not being in compliance with Section 9 (f), (g), and (h), the Union could not lawfully make the agreement; hence, in conformity with the clear language of Section 9 (e) (1), there is no occasion for the Board to conduct an election to ascertain whether the employees desire that "such authority be rescinded."

This construction not only follows the plain and unambiguous language of Section 9 (e) (1) but is also in accord with the intent of Congress, as reflected in the legislative history which, to be sure, is meagre. This history shows that the purpose of Section 9 (e) (1) was to safeguard employees against subjection to loss of employment through an

² Following a Board-directed election, the International was certified on August 28, 1951, as exclusive collective bargaining representative for all production and maintenance employees at the Employer's Roaring Spring, Pennsylvania, paper plant, excluding office and clerical employees, professional employees, guards, and supervisors, as defined in the Act.

³ Public Law 189, 82nd Congress, Chp. 534, 1st session, approved October 22, 1951.

enforceable or effective union-security clause by affording the employees a ready means by majority vote to rescind the authority to enter into such an arrangement.⁴ Where, as in this case, the union-security clause does not conform to the requirements of Section 8 (a) (3), there is no enforceable or effective union-security clause in existence under which the employees may lawfully be subject to discharge or against which they are to be safeguarded by a deauthorization election. The remedies available under Section 8 (a) (2), 8 (a) (3), and 8 (b) (2) would seem sufficient to correct the restraining effects of the "mere existence" or the enforcement of the invalid union-security clause.

Nor is a different result called for by the mere fact that in this case the union-security clause is defective only because of the Local's noncompliance. Our dissenting colleagues would have to give the same construction to the statute in the case of a complying union with a union-security clause which exceeds the permissible limits of Section 8 (a) (3).

The suggestion that the result here reached places "a noncomplying union in a better position than a complying union" does not bear analysis. The dismissal of the petition in no way immunizes the Union; on the contrary, it serves notice that the union-security clause is illegal and hence may not be enforced. Moreover, it may be argued with equal force that it is the construction arrived at in the dissenting opinion which places a noncomplying union on a par with a complying union. For should a majority vote against deauthorization, the non-complying union will have the benefit of that vote as an argument in support of its present illegal contract and in seeking to execute another union-security clause.⁵

We therefore conclude that, as the requirements specified in Section 9 (e) (1) have not been met, we are not authorized to conduct a deauthorization election. Accordingly, we shall dismiss the petition.

Order

IT IS HEREBY ORDERED that the petition filed herein be, and hereby is, dismissed.

⁴ Report No. 646 of the Senate Committee on Labor and Public Welfare, to accompany S. 1959, states "While discontinuing the *mandatory* election procedure, which had proved *expensive, burdensome, and unnecessary*, the bill continues to safeguard employees *against subjections to union-shop agreements* which a majority disapproves." [Emphasis supplied]

See also, Report No. 1082 of the House Committee on Education and Labor which contains an almost identical statement.

Congressional Record: House, October 9, 1951, page 13125: Mr. Springer of Illinois, Republican, speaking in support of the amendment, "The bill continues to safeguard employees against *subjections to union-shop agreements* which a majority disapproved" [Emphasis supplied]

⁵ Whether the vote be for or against union authorization, Section 9 (e) (1) merely requires the Board to "certify the results thereof to such labor organization and to the employer."

CHAIRMAN HERZOG and MEMBER STYLES, dissenting:

This is a matter of first impression, calling for an interpretation of a recent amendment to the Act. We disagree with the majority's holding that the instant petition should be dismissed because, due only to the incumbent union's own noncompliance with Section 9 (h), there is no legally enforceable union-security agreement in effect.

We believe that our colleagues' interpretation of Section 9 (e) (1) of the Act, as amended in 1951, is much too literal, and leads to a result wholly at variance with the real intent of Congress. As we read the legislative history, we perceive a congressional desire to compensate in part for the elimination of the earlier mandatory union-shop authorization elections by retaining the safety valve of permissive deauthorization elections, to be conducted once 30 percent of the affected employees manifest an initial desire to eliminate the union-security provision. In amending the Act, Congress took such pains to make certain that noncompliance would continue to invalidate a union-security provision, that we cannot believe it also intended the paradoxical result of having that very noncompliance destroy employees' opportunity to escape from the practical consequences of the presence of such a provision.

This Board has repeatedly recognized the restraining effect inherent in the mere existence of a union-security clause which fails to meet the requirements of Section 8 (a) (3) of the Act.⁶ It is the restraint and compulsion to which employees are subjected, whether by an enforceable or by an unenforceable union-security clause, against which Congress sought to safeguard employees, by affording them this ready means of escape through a deauthorization election. We see no logic in our colleagues' construction of the 1951 amendment, which would place a noncomplying union in a better position than a complying union whenever a deauthorization election is sought. For the majority would have directed such an election in this case if Local 415 had only been in compliance. We would not permit that union to use its own omission as a shield.

⁶ *C Hager & Sons Hinge Manufacturing Company*, 80 NLRB 163, and cases following.

MONTGOMERY WARD AND COMPANY *and* INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS, LOCAL UNION 1471, AFL, PETITIONER.
Case No. 17-RC-1323. June 30, 1952

Decision and Order

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Cyrus A. Slater,
99 NLRB No. 171.