

13. By discriminating in regard to the hire and tenure of employment of Joe Steelman, thereby discouraging membership in American Federation of Hosiery Workers, AFL, Respondent has engaged and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) and 8 (a) (3) of the Act.

14. The aforesaid labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

[Recommendations omitted from publication.]

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J. SULLIVAN & SONS MANUFACTURING CORPORATION,  
Petitioner *and* TEXTILE WORKERS UNION OF AMERICA,  
CIO

J. SULLIVAN & SONS MANUFACTURING CORPORATION *and*  
J. SULLIVAN & SONS MFG. CORP. INDEPENDENT UNION,  
Petitioner. Cases Nos. 4-RM-87 *and* 4-RC-1789. June 11,  
1953

### DECISION AND DIRECTION OF ELECTION

Upon separate petitions duly filed under Section 9 (c) of the National Labor Relations Act, a consolidated<sup>1</sup> hearing was held before Herbert B. Mintz, hearing officer. The hearing officer's rulings<sup>2</sup> made at the hearing are free from prejudicial error and are hereby affirmed.

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-member panel [Members Houston, Murdock, and Peterson].

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 Textile Workers Union, CIO, herein called TWU, asserts that the J. Sullivan & Sons Mfg. Corp. Independent Union, herein called Independent, is not a labor organization within the meaning of the Act. We find no merit in this contention. The constitution and bylaws of the Independent, received

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<sup>1</sup> The cases were consolidated for hearing by order of the Regional Director dated March 24, 1953.

<sup>2</sup> The hearing officer referred to the Board for ruling the TWU's motion to dismiss the "RC" petition on the grounds that: (1) The Independent is not a labor organization; and (2) a contract between the Employer and TWU operates as a bar. As regards the first and second grounds, this motion is denied for reasons hereinafter stated in paragraphs numbered 2 and 3 respectively, *infra*.

The TWU further contends that the petition should be dismissed for the reason that the Independent was not in compliance with Section 9 (f), (g), and (h) of the Act at the time the petition was filed. We find no merit in this contention. The Board has frequently held that compliance is a matter for administrative determination and is not a litigable issue. Florence Manufacturing Co., Inc., 92 NLRB 185; Muntz Television, Inc., 92 NLRB 29. We are, moreover, administratively satisfied that the Independent is in compliance

in evidence, show clearly that the organization exists for the purpose of representing employees and dealing with the Employer with respect to wages and working conditions generally. Moreover, the Independent has held meetings, adopted the above constitution, admitted members, and appointed temporary officers. The fact that the Independent has never actually bargained with the Employer and the further fact that the Independent has been functioning informally are not controlling considerations.<sup>3</sup> Accordingly, we find that both the TWU and the Independent are labor organizations as defined in Section 2 (5) of the Act, and that both claim to represent certain employees of the Employer.<sup>4</sup>

3. The TWU has bargained with the Employer since July 1949, their first contract running from July 11, 1949, to July 11, 1951. In June 1951 the Employer filed an "RM" petition challenging the majority status of the TWU.<sup>5</sup> The second contract, although dated and made effective as of July 11, 1951, was actually executed on December 14, 1951, and expired on November 30, 1952. Prior to the contract's expiration, the Independent, on October 13, 1952, filed an "RC" petition, by which it sought to represent those employees in the unit then represented by TWU. Negotiations toward a new contract took place between the Employer and TWU in November 1952, culminating in full agreement on all terms of a collective-bargaining contract on November 26, 1952. That contract was to be effective December 1, 1952, and to expire on December 1, 1953. However, the contract was never reduced to writing and signed.<sup>6</sup>

The TWU contends that the accord reached on November 26, 1952, constitutes a binding contract which, though not reduced to writing, should bar this proceeding. We find no merit in this contention. The record shows that the contract which expired on November 30, 1952, was not renewed and was not superseded by a new written signed contract. We have consistently held that, for an agreement to be considered a bar, it must have been reduced to writing and signed prior to the filing of the petition sought to be barred.<sup>7</sup> Neither condition is present

<sup>3</sup>See General Shoe Corp., 90 NLRB 1330, 1354; Union Carbide and Carbon Corp., 89 NLRB 460.

<sup>4</sup>Nassau Mutual Fuel Co., Inc., 90 NLRB 1233; Lake County Farm Bureau Cooperative Assn., Inc., 101 NLRB 110.

<sup>5</sup>The TWU moved to dismiss the "RM" petition and the Employer moved to amend its petition. As we hereinafter find that the "RC" petition raises a question concerning representation, we need not pass upon those motions directed to the "RM" petition.

<sup>6</sup>In setting forth the bargaining history of the Employer and the TWU, we have made reference to our own findings in a prior decision involving the Employer (J Sullivan & Sons Mfg. Corp., 102 NLRB 2). See Salant & Salant, Inc., 92 NLRB 343. It is the practice of the Board to take notice of its own records and proceedings. Stewart-Warner Corp., 100 NLRB 608. In this connection, TWU moved to "consolidate" or incorporate the record from the prior proceeding involving this Employer into the instant record. Inasmuch as the record in the prior proceeding has already been evaluated by the Board and as the Board takes judicial notice of its own proceedings, no useful purpose could be served by granting such a motion. Accordingly, the motion is denied. Underwood Machinery Co., 79 NLRB 1287; Shell Chemical Corp., 81 NLRB 965.

<sup>7</sup>American Supplies, Inc., 98 NLRB 692.

herein. First, the agreement can be characterized as, at most, an oral contract, and, second, the Independent's "RC" petition was filed prior to any contract presently existing between the Employer and TWU. Accordingly, we find that the agreement reached on November 26, 1952, does not operate as a bar to the "RC" petition.<sup>8</sup>

On January 7, 1953, the Board issued a Decision and Order,<sup>9</sup> pursuant to charges filed by the TWU, finding a violation of Section 8 (a) (5) of the Act against the Employer. The TWU contends that the Employer has not complied with the Board Order, and that the petitions should not be entertained until compliance. We have already passed upon this contention. In reversing the Regional Director's dismissal of the instant petitions, on March 3, 1953, the Board said that the Employer had, in effect, complied with the Board's Order. Accordingly, we reject the TWU's position. Furthermore, we are of the opinion that it will best effectuate the policies of the Act, and promote the orderly processes of collective bargaining to direct an immediate election herein.<sup>10</sup>

4. We find that all production and maintenance employees at the Employer's Philadelphia, Pennsylvania, plant, excluding factory clerical employees, office clerical employees, engineer, watchmen, and supervisors as defined in the Act<sup>11</sup> constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

5. The TWU objects to the establishment of any unit at this time, contending that the present complement of employees is allegedly not a representative or substantial group because the Employer's production operations will be resumed in the near future.

The plant is presently being used by the Employer exclusively for finishing narrow fabric tape. The Employer maintains a complement of approximately 50 employees. While the Employer once was engaged in weaving narrow fabric tape at this plant, using 100 employees in that operation, it has not, since November 1952, had any employees engaged in weaving. The weaving operation was discontinued at that time, the weaving machinery sold, and the space used for the weaving operation has been leased to other companies. Furthermore, there is no indication in the record that the Employer has any intention of resuming the weaving operation at this plant. Under these circumstances, we can perceive no reason for not directing an immediate election among the production and maintenance employees presently employed.<sup>12</sup>

[Text of Direction of Election omitted from publication.]

<sup>8</sup>See Weidemann Machine Co., 100 NLRB 124; Michigan Bakeries, Inc., 100 NLRB 658; Weyerhaeuser Timber Co., 93 NLRB 842.

<sup>9</sup>J. Sullivan & Sons Mfg. Corp., *supra*.

<sup>10</sup>See Jasper Seating Co., 101 NLRB 322; U. S. Smelting, Refining and Mining Co., 93 NLRB 1280; West-Gate Sun Harbor Co., 93 NLRB 830

<sup>11</sup>The unit was stipulated by the parties.

<sup>12</sup>Chrysler Corp., (DeSoto-Warren Ave. Plant), 81 NLRB 649; Frank Foundries Corp., 92 NLRB 1754