

Pompton Lakes, New Jersey, plant, excluding all other employees, guards, and supervisors as defined in the Act.

If a majority vote for the Petitioner they will be taken to have indicated their desire to constitute a separate appropriate unit, and the Regional Director conducting the election directed herein is instructed to issue a certification of representatives to the Petitioner for the employees described above, which the Board, under such circumstances, finds to be appropriate for purposes of collective bargaining. In the event a majority do not vote for the Petitioner, these employees shall remain a part of the existing unit and the Regional Director will issue a certification of results of election to such effect.

[Text of Direction of Election omitted from publication.]

Standard Cigar Company and Cigar Makers International Union of America, AFL-CIO, Petitioner. *Case No. 12-RC-8 (formerly 10-RC-3525). March 28, 1957*

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Allen Sinsheimer, Jr., 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 National Labor Relations Act.²
2. The labor organization involved claims to represent certain employees of the Employer.³

¹ During the hearing, the Employer renewed motions to dismiss which had been previously made to, and denied by, the Regional Director for the Tenth Region, and made additional motions to dismiss, all of which were referred by the hearing officer to the Board. The Employer also made several offers of proof and motions for continuance of the hearing, which were denied by the hearing officer. These various motions were based upon alleged inadequacies in the Petitioner's showing of interest and in its compliance with the filing requirements of Section 9 (f), (g), and (h) of the Act. In addition, after the hearing, the Employer filed with the Board motions to dismiss, to investigate these matters administratively, or to reopen the hearing for further evidence regarding the adequacy of the Petitioner's interest showing and Section 9 compliance, resting on grounds set forth in its accompanying brief. All these motions are hereby denied for the reasons set forth below, except the motion for an administrative investigation of Petitioner's compliance which is the subject of an administrative determination of compliance status.

² As the Employer annually sells cigars valued at over \$200,000 to companies in the State of Florida, each of which annually ships goods valued at over \$50,000 out of the State, we find that the Employer is engaged in commerce within the meaning of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein. *Jonesboro Grain Drying Cooperative*, 110 NLRB 481.

³ The Employer refused to stipulate that the Petitioner is a labor organization within the meaning of the Act. As the Petitioner is an organization which represents employees for collective bargaining purposes, we find that it is a labor organization within the meaning of Section 2 (5) of the Act.

3. (A) *Interest showing*: Prior to the hearing, which was held on August 20 and 21, 1956, the Employer filed a motion to dismiss, alleging that the Petitioner's showing was inadequate and had been obtained by coercion, restraint, and misrepresentation. On July 30, 1956, the Regional Director for the Tenth Region issued an order stating that he was satisfied, on the basis of an independent investigation, that the Petitioner's "interest among the employees involved is substantial and adequate, and that it was not improperly obtained," and, accordingly, denying the Employer's motion to dismiss. The Employer sought to litigate this matter at the hearing, but the hearing officer properly refused to permit it. The Employer thereupon renewed its motion to dismiss on this ground, which motion was referred to the Board. Again in its motions to dismiss and accompanying brief filed with the Board, the Employer raised the issue of the adequacy of the interest showing, and urged (1) reopening of the hearing to permit litigation of this matter, (2) dismissal of the petition, or (3) administrative reversal of the Regional Director's order.

It is well settled that showing of interest is a matter for administrative determination, and is not subject to collateral attack by the parties.⁴ Moreover, we are administratively satisfied that, at all times pertinent herein, the Petitioner had an adequate and proper showing of interest.⁵ The said motions are therefore denied.

(B) *Section 9 compliance*: Before the hearing, the Board had administratively determined that the Petitioner was in compliance with the filing requirements of Section 9 of the Act. Nevertheless, at the hearing, the Employer attacked the Petitioner's compliance on several grounds, and the hearing officer, while refusing to permit some of the matters thus raised to be litigated, did permit litigation of others.

The hearing officer permitted evidence to be adduced regarding the Employer's contentions that the Petitioner's compliance was defective because it has not furnished its members with the financial reports required by Section 9 (f) and (g); an affidavit filed by a vice president of the Petitioner under Section 9 (h) is false; and a number of individuals, although not designated in the Petitioner's constitution as officers, are in fact officers who have not filed the affidavit required by Section 9 (h).

These contentions do not raise questions of statutory interpretation of Section 9 (f), (g), or (h), but merely questions as to whether the

⁴ *Maron Building Products Co., Inc.*, 116 NLRB 1406.

⁵ *Globe Iron Foundry*, 112 NLRB 1200, on which the Employer relies, is distinguishable. There, the question as to the adequacy of the interest showing was raised for the first time at the hearing, and thereafter, in view of evidence submitted by the employer therein, the Board investigated the showing and found it inadequate. Here, however, the question was raised, and was investigated by the Regional Director, prior to the hearing, and no new evidence has been submitted to warrant a reversal of the Regional Director's findings and order.

Petitioner has in fact fulfilled the filing requirements of those sections. The Board has declared in a number of decisions that the fact of compliance by a labor organization required to comply may not be litigated in Board representation or complaint proceedings, and has also repeatedly stated that the parties to such proceedings should, instead, seek an administrative investigation of those compliance matters which the Board may properly decide in collateral proceedings.⁶ Accordingly, the parties had no right to litigate in the present hearing the adequacy of the Petitioner's compliance with the filing requirements of Section 9, and the hearing officer erred in permitting any evidence to be presented with respect to such compliance questions.

We are aware that in a few cases where hearing officers have similarly disregarded Board policy and permitted such questions to be litigated, the Board, while reaffirming the nonlitigability of such questions, nevertheless, because of special considerations, has considered the evidence and passed upon the issues, assuming, *arguendo*, that the questions were litigable or that the issue was properly before it in a collateral proceeding.⁷ As a result, perhaps, of these exceptional situations, some hearing officers have continued to disregard the Board's reiterated policy in such cases.

Under all the circumstances of this case, we shall grant the Employer's Motion for an Administrative Determination of the questions raised regarding the Petitioner's compliance. In the administrative determination we have considered the evidence erroneously adduced in this case. This is, however, the last such exception to be granted. In all future cases, we shall apply our policy strictly, and require the parties to present such compliance issues for administrative determination completely separate and apart from the representation or complaint proceedings. Where motions for administrative determination are filed, the Board decides whether a hearing and receipt of evidence is necessary to dispose of the motion. Any evidence which may be adduced in any other proceeding contrary to this policy will be disregarded for all purposes.

In our Administrative Determination of Compliance Status, issued simultaneously with this Decision, we find that the Petitioner is in full compliance with the requirements of Section 9 (f), (g), and (h). The Employer's motion to dismiss the petition herein on the ground that the Petitioner is not in compliance is therefore denied.

Of the compliance questions raised by the Employer, the only one which could appropriately be litigated in this proceeding was the

⁶ *Ekco Products Company*, 117 NLRB 137; *Kohler Co.*, 117 NLRB 321; *Crenshaw's Inc.*, 115 NLRB 1374; "*M*" *System, Inc.*, 115 NLRB 1316; *Desaulniers and Company*, 115 NLRB 1025.

⁷ *Kohler Co.*, *supra*; see also *Ekco Products Company*, *supra*; *Crenshaw's Inc.*, *supra*.

necessity, but not the adequacy,⁸ of the compliance by the Petitioner's locals in the Tampa area and the Joint Advisory Board. In this connection, the Employer contends that these locals and the Joint Advisory Board, which is composed of delegates from these locals, must comply with the filing requirements of the Act before the Board can process the present petition because an industrywide pattern of bargaining has been established in the Tampa area; the Petitioner's locals are represented, for purposes of bargaining with an employer association, by the Joint Advisory Board; and if the Employer's employees designate the Petitioner as their bargaining representative, the local in the Employer's plant would be required, by the Petitioner's constitution and bargaining practices, to participate in the multiemployer bargaining pattern.

The Petitioner maintained at the hearing that there was no local in the picture at the Employer's plant; that all organizing among the Employer's employees had been carried on by the Petitioner; and that, if certified, it would not designate an existing local to represent these employees but would establish a new local at the Employer's plant. It maintained also that this new local would not bargain through the Joint Advisory Board, but would negotiate separately with the Petitioner's assistance,⁹ because the Employer's methods of manufacture are somewhat different from those of other manufacturers in the area, and because most of the Employer's employees are English-speaking whereas the employees at the other cigar plants speak a foreign language, chiefly Spanish, and the Joint Advisory Board carries on all its activities in Spanish.¹⁰ In these circumstances, the Board finds that the Petitioner's status in this proceeding is not dependent upon the compliance of the Tampa locals or the Joint Advisory Board, and the Employer's contention with respect to their compliance does not warrant further consideration.¹¹

Accordingly, the Board finds that a question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

⁸ The Employer complains, in its Motion for an Administrative Determination, that it was denied "an opportunity to litigate the sufficiency of compliance of these locals. . . ."

⁹ The Employer relies on *Illinois Bell Telephone Company*, 100 NLRB 101, where, although a new local was to be established at the plant of the employer there involved, the Board required all locals in the area belonging to the Joint Board, as well as the Joint Board, to be in compliance. In that case, however, the Joint Board was the petitioner, and not the international as stated in the Employer's brief. Moreover, the Joint Board was comprised of delegates from each local in the area, and it was authorized to enforce wage and hour scales, conduct all strikes, determine jurisdictional questions, and approve all contracts affecting locals in the area as well as the employees involved in the case before the Board. The facts of that case are, therefore, clearly distinguishable from those in the instant case.

¹⁰ The contract which the Joint Advisory Board negotiated with the employer association is printed in both Spanish and English.

¹¹ See *Brooklyn Borough Gas Company*, 110 NLRB 18, *Ozark Manufacturing and Supply Company*, 108 NLRB 1476.

4. In accord with the agreement of the parties,¹² we find that all production employees at the Employer's Tampa, Florida, plant, including shipping department employees and the janitor, but excluding the plant engineer, mechanics, office employees, watchmen, executives, foremen, and all other supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.¹³

[Text of Direction of Election omitted from publication.]

MEMBER RODGERS took no part in the consideration of the above Decision and Direction of Election.

¹²The Petitioner originally proposed a unit excluding teachers and janitors. When the Employer stated that it had no employees classified as teachers, that foremen were primarily responsible for training new employees, and that the foremen were supervisors, the Petitioner agreed with the Employer that the reference to teachers should be omitted. Further, when the Employer stated that it had only one janitor, that he was sometimes replaced by other employees, and that he did other kinds of work in addition to his janitorial duties, the Petitioner agreed with the Employer that the janitor should be included. The parties agreed to the exclusion of mechanics, who are highly skilled employees trained in the maintenance of cigar machinery. Routine maintenance work is done by production employees.

¹³The Employer moved to dismiss on the ground that the Petitioner, if certified, would not represent all the employees in the unit but only those who became members of the Petitioner. The evidence does not establish that the Petitioner intends, if certified, not to represent all employees in the unit. If it should fail to do so, its certificate would be subject to revocation.

Compliance Status of Cigar Makers International Union of America, AFL-CIO. *March 28, 1957*

ADMINISTRATIVE DETERMINATION OF COMPLIANCE STATUS

In connection with Case No. 12-RC-8, a representation proceeding involving its employees, Standard Cigar Company, herein called the Employer, has filed a motion for an administrative determination of the compliance status of Cigar Makers International Union of America, AFL-CIO, herein called the Union.

In the Decision and Direction of Election issued in the representation case, the Board reiterated its policy that "the fact of compliance by a labor organization required to comply may not be litigated in Board representation or complaint proceedings," and, further, that the parties to such proceedings must "seek an administrative investigation of those compliance matters which the Board may properly decide in collateral proceedings." In this regard, the Board stated further as follows:

. . . the parties had no right to litigate in the present hearing the adequacy of the Petitioner's compliance with the filing require-