

the stipulation for certification upon consent election was executed by the parties, and they cannot, as found by the Regional Director, under well-established Board policy, be considered as interference with the election.<sup>6</sup>

As we have found that the Employer's objections do not raise material or substantial issues affecting the conduct of the election, we hereby overrule them. Because the Petitioner has obtained a majority of the valid votes cast, we shall certify it as the exclusive representative of the employees in the stipulated unit.

[The Board certified Retail Clerks International Association, Local 1365, AFL-CIO, as the designated collective-bargaining representative of the employees in the appropriate unit described in paragraph 4 above.]

<sup>6</sup> *Shoreline Enterprises of America, et al.*, 114 NLRB 716; and *F. W. Woolworth Co.*, *supra*.

**Brazeway, Inc., Petitioner and International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, AFL-CIO, and its Local 1193.** *Case No. 7-RM-182.*  
*October 23, 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 Charles H. Steere, hearing officer.<sup>1</sup> The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Leedom and Members Murdock and Rodgers].

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 International claims to represent employees of the Employer.
3. The International was certified by the Board as the collective-bargaining representative for the Employer's employees on November 7, 1955.<sup>2</sup> Thereafter, the International, together with its Local 1193, which was formed after the election to represent the Employer's employees for the International, entered into bargaining negotiations

<sup>1</sup> International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, AFL-CIO, hereinafter referred to as the International, the only labor organization named in the petition, and its Local 1193 did not appear at the hearing although served with notice of hearing.

<sup>2</sup> Case No. 7-RC-2908 (not reported in volumes of Board Decisions and Orders).

with the Employer which continued from December 16 until January 24, 1956. On the latter date the International called a strike and began picketing the Employer. The International abandoned its picketing in October 1956, but has not disclaimed its representative interest in Employer's employees.<sup>3</sup> In these circumstances, we find a question exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) (B) and Section 2 (6) and (7) of the Act.<sup>4</sup>

4. We find that all production and maintenance employees at the Employer's Adrian, Michigan, plant, including regular part-time employees, but excluding office and plant clerical employees, professional employees, guards, and 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.<sup>5</sup>

5. The Board's records show that the compliance status of Local 1193 lapsed on January 1, 1957. However, the International, the claiming labor organization herein, has been in compliance at all relevant times. We shall, therefore, resolve the representation question herein by conducting an election in which the International's name appears on the ballot. The International will be certified if it wins the election provided that by the date of the election, and not later, Local 1193 is in full compliance with the filing provisions of the Act. Absent such compliance, the Board will only certify the arithmetical results of the election.

This accords with the procedure established in *Calcasieu Paper Company, Inc.*, *supra*, in which the Board most recently expressed its policy governing RM cases where the question concerning representation is raised by a complying labor organization which was certified by the Board and which has a noncomplying local. Our dissenting colleague, who also dissented in *Calcasieu*, claims that *Darling and Company*<sup>6</sup> must be applied here on the ground that that case overruled the *Calcasieu* case. On the contrary, *Darling and Company* did not reverse *Calcasieu* but went to considerable lengths to distinguish it, principally upon the ground that the complying international in *Darling* was not the certified representative nor did it claim representative status, while in the *Calcasieu* case, as here, the complying internationals were certified by the Board. Thus the Board stated (116 NLRB 374, 375) :

In the *Calcasieu* case, also involving an RM petition, the claiming incumbent consisted of 2 international unions which had been

<sup>3</sup> Its nonappearance at the hearing is not tantamount to such a disclaimer. *O'Connor Motor, Inc.*, 100 NLRB 1146.

<sup>4</sup> *Calcasieu Paper Company, Inc., etc.*, 109 NLRB 1186; *Nathan Warren & Sons, Inc.*, 116 NLRB 1662.

<sup>5</sup> This unit is similar to the one certified in Case No. 7-RC-2903.

<sup>6</sup> 116 NLRB 374.

certified as joint representatives of the appropriate unit and, subsequent to certification, had established 3 locals to represent the employees in the unit. There, despite the fact that the locals' compliance had lapsed prior to the hearing, the Board found that the locals' noncompliance did not preclude the Board from resolving the question concerning representation raised by the complying internationals, and it directed an election placing the internationals on the ballot, with the proviso that, if the internationals won, they would not be certified unless the locals came into compliance by the date of the election. In the instant case, however, the International has never been the majority representative or asserted a claim to representation in the historical unit. On the contrary, Local 127 has been for many years the recognized representative in this unit, as indicated by successive contracts, and is still claiming majority status. Although the International has placed a supervisor and receiver over the affairs of Local 127, we are satisfied that Local 127 is not defunct and continues as a separate entity. Indeed, it is clear that the receivership was nothing more than an internal device designed to conserve the assets of Local 127 and to insure the latter's ability to function effectively under its outstanding charter, as the bargaining representative of the employees in question. We are therefore unable to agree with the Employer that the receivership imposed by the International extinguished the life, as well as the claim of the local and in turn vicariously made the International the claimant, within the meaning of the *Calcasieu* rule.

Accordingly, as the facts herein clearly establish this International to be "the claimant, within the meaning of the *Calcasieu* rule," we shall apply that rule and direct the election in the manner described above.

[Text of Direction of Election omitted from publication.]

MEMBER MURDOCK, dissenting:

The vital question here is whether the Board, upon an employer's petition, should provide its processes for the holding of a representation election with a noncomplying union on the ballot. There can be no dispute that both the International and its Local 1193, jointly constituting the Union representing this Employer's employees, are in a status of noncompliance by reason of Local 1193's failure as of January 1, 1957, to comply with Section 9 (g). Recently, in *Darling and Company*, in essentially the same situation, the employer petition was dismissed by the Board, Member Rodgers dissenting. The Board there, upon careful reconsideration of the policy question involved, expressly and at length reaffirmed the *Loewenstein* doctrine,<sup>7</sup> in sub-

<sup>7</sup> *Herman Loewenstein, Inc.*, 75 NLRB 377.

stance that "the exclusion of noncomplying unions from the ballot in elections petitioned for by an employer is more nearly consistent with the supervening policy of denying the imprimatur of Government to such labor organizations." The *Loewenstein* doctrine is squarely and unavoidably in issue here. The policy initially expressed in *Loewenstein* and reasserted in the *Darling* case plainly cannot persist in face of the present majority holding. I would adhere to *Loewenstein*.

My colleagues directly and solely rely upon the *Calcasieu* case,<sup>8</sup> decided in September 1954. Unquestionably, the Board majority in *Calcasieu* intended to and did necessarily reverse the then long-standing *Loewenstein* doctrine.<sup>9</sup> But the more recent definitive holding in *Darling, supra*, which on the *Loewenstein* issue is the diametric opposite of *Calcasieu*, must take precedence. The distinction which my colleagues draw is entirely illusory, and by any test of reason, anomalous. They fail to show where it makes a particle of difference materially whether the International or the Local is nominally the bargaining claimant.<sup>10</sup> Indeed, it is utterly unrealistic to regard the Local as other than a bargaining claimant, particularly in the circumstances here where it is clear that the Local was created after the certification, and exists entirely, to represent the instant employees, and has in fact participated fully in all the bargaining with the Employer, in the calling of the strike and the picketing.<sup>11</sup> Surely, my colleagues are not suggesting at this late juncture that, notwithstanding the noncomplying bargaining Local, the International is in a privileged class of noncompliance because it has itself met the filing requirements.<sup>12</sup> Such is nevertheless the inevitable effect of their holding. Moreover, their holding provides an all too facile means for a noncomplying union to obtain access to Board election processes,

<sup>8</sup> *Calcasieu Paper Company, Inc.*, 109 NLRB 1186.

<sup>9</sup> See, e. g., my dissenting opinion in *Calcasieu*, and Member Rodgers' dissent opinion in *Darling and Company*.

<sup>10</sup> *Lane-Wells Co.*, 79 NLRB 252; cf. *N. L. R. B. v. Highland Park Manufacturing Company*, 341 U. S. 322.

<sup>11</sup> The record does not justify the majority's reference to the International alone as having called the strike and engaged in the picketing. The testimony refers merely to "the union," which in the circumstances must be presumed to include both the International and Local.

<sup>12</sup> The Board opinion in *Calcasieu* contained the statement that the Internationals "made the claim for recognition," (without indicating, however, that the noncomplying Locals were joint claimants, which was obviously the fact). Only the Internationals were placed on the ballot. The reason for so doing was unexplained, and no rational basis therefor appears, except possibly the fact there pointed out that the names of the Locals had been omitted from the employer's petition. In *Darling and Company*, the Board rejected the employer's principal argument that *Calcasieu* was controlling. Among other things, the Board stated that in *Darling* the International never asserted a representation claim. The *Darling* case cannot be construed as reading into the *Calcasieu* decision a distinction based on the irrelevant circumstance that the Internationals were (jointly with the Locals) bargaining claimants, or accepting the anomaly that the Internationals were thereby freed of the restrictions of compliance in the statute. Nor can *Darling* conceivably be interpreted as intending to save the *Calcasieu* case, with which it is fundamentally at odds on the controlling *Loewenstein* issue.

contrary to congressional intent, simply by having its affiliate, international or local as the case may be, come forward as the nominal bargaining claimant.

As recently as October 4, 1957, in *Mine and Mill Supply Company*, 118 NLRB 1536, the doctrine of the *Darling* and *Loewenstein* cases was again expressly reaffirmed in a majority decision by Chairman Leedom and myself, with Member Rodgers dissenting on the same fundamental basis which he asserted in his *Darling* dissent. And any doubt about the legal purport of the *Darling* case should immediately be removed in light of the Board's express reliance therein upon cases, with circumstances identical to those here, which dismissed the employer petition on the basis of the *Loewenstein* policy. Thus, in *Staten Island Cleaners*,<sup>13</sup> and in *Telegraph Publishing Company*,<sup>14</sup> the representation claim was made by the International, and the Local was not in compliance.<sup>15</sup> In the latter case, after issuing a show cause order, the Board *revoked the certification* of the International in view of the Local's noncompliance, citing *Lane-Wells Company*, 79 NLRB 252. This is the effective procedure, I submit, to accomplish the purposes of the Act. I would, accordingly, issue a notice to show cause why the certification of the International herein should not be rescinded because of Local 1193's noncompliance.

<sup>13</sup> 93 NLRB 396.

<sup>14</sup> 102 NLRB 1173.

<sup>15</sup> Also cited were *Law Tanning Company*, 109 NLRB 268, where the international of the local claimant was out of compliance; and *The Federal Refractories Corporation*, 100 NLRB 257, where both the claiming unions, not affiliated with each other, were non-complying. These cases similarly show that the technical basis for the noncompliance was deemed entirely immaterial—whether because of the noncompliance of the local, or the international, or both.

**Mid-States Corporation d/b/a Rex Mobile Homes and Local 544,  
Sheet Metal Workers International Association, AFL-CIO,  
Petitioner. Case No. 36-RC-1291. October 23, 1957**

### SUPPLEMENTAL DECISION AND ORDER

Pursuant to a Decision and Direction of Election herein issued on August 6, 1957,<sup>1</sup> an election by secret ballot was conducted on August 20, 1957, under the direction and supervision of the Regional Director for the Nineteenth Region, among the employees in the unit found appropriate by the Board. After the election the Regional Director served upon the parties a tally of ballots which showed that there were approximately 88 to 90 eligible voters and that 92 valid ballots were cast, of which 36 were cast for the Petitioner, 37

<sup>1</sup> Not reported in the printed volumes of Board Decisions and Orders.

119 NLRB No. 14.