

several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

V. THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Upon the foregoing findings of fact, and upon the entire record in the case, I make the following:

CONCLUSIONS OF LAW

1. General Teamsters, Chauffeurs and Helpers Union, Local No. 298, I. B. T. & H. of A., A. F. L.-C. I. O., is a labor organization within the meaning of Section 2 (5) of the Act.
2. All production and maintenance employees of the Respondent at its Knox, Indiana, plant excluding watchmen-janitors or janitor-guards, office clerical employees, 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.
3. The above-named Union was on March 13, 1956, and since that date has been at all times the exclusive representative of all employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.
4. By interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.
5. By refusing on March 17, 1956, and at all times thereafter, to bargain collectively with the above-named Union as the exclusive representative of its employees in the aforesaid appropriate units, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.
6. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

[Recommendations omitted from publication.]

Andor Company, Inc. and Jose P. Feliciano, Petitioner and Local 229, United Textile Workers of America, AFL-CIO. *Case No. 2-UD-33. December 14, 1957*

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9 (e) of the National Labor Relations Act, a hearing was held before Julian J. Hoffman, 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

¹At the hearing, the Union objected to the hearing officer's granting the Petitioner permission to amend its petition by adding the term "Inc." to the name of the Employer listed thereon, and by adding the term "AFL-CIO" after the name of the Union. As the amendments seek to correct merely technical defects in the names of the Employer and the Union, and as there is no showing that these parties have been prejudiced thereby, the Union's objection is overruled. See *United States Plywood Corporation*, 112 NLRB 1471, 1472-73. The names of the Employer and the Union are accordingly amended.

²The Union asserts that the Employer is not engaged in commerce and that the Board should decline to exercise jurisdiction over it. The record discloses that during the annual period material to this proceeding, the Employer furnished belts valued in excess

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

3. On March 23, 1954, the Employer and the Union executed a 2-year contract providing that "All employees shall be required to join the Union after a 30-day period following their employment or the effective date of this agreement, whichever is later, and shall remain members in good standing in the Union as a condition of employment." The contract also provided for the checkoff, with the employees' written consent, of "union membership dues" which were defined as including assessments. The contract then provided that "The Employer agrees to discharge, upon receipt of a registered letter from the Union, any employee who has been expelled or suspended by the Union for being in arrears in dues or undermining the Union." On March 23, 1956, this contract, with minor exceptions not pertinent here, was renewed for an additional 2-year period. On November 30, 1956, the Petitioner filed the instant petition seeking an election to rescind the Union's authority to make a union-security agreement.

The Union moved to dismiss the petition on the grounds that (1) the petition was untimely filed under the Board's contract-bar rules, and (2) there is no showing that the union-security agreement in its contract was made "pursuant to Section 8 (a) (3)" of the Act as required under Section 9 (e) (1) as a condition to the maintenance of a deauthorization petition.

With respect to the Union's first ground for dismissal of the petition, the Board has consistently held since the 1951 amendments to Section 9 (e) (1) of the Act that "the normal contract-bar principles established by the Board cannot be applied to union-shop deauthorization cases. . . ." ³ We perceive no cogent reason, and the Union has advanced none, for departing from the Board's established policy in this area. Accordingly, the Union's motion to dismiss the petition as being untimely filed under the Board's contract-bar rules is denied.

With respect to the Union's second ground for dismissal, Section 9 (e) (1) of the Act provides that

Upon the filing 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)*, of a petition alleging they desire that such authority be rescinded, the Board shall take a secret ballot of the employees

of \$100,000 to a dress manufacturer in the same State who in turn shipped dresses out of State valued in excess of \$50,000. On the basis of the foregoing, we find that the Employer is engaged in commerce within the meaning of the Act and that it will effectuate the policies of the Act to assert jurisdiction over it. See *Jonesboro Grain Drying Co-operative*, 110 NLRB 481, 484.

³ See *Great Atlantic & Pacific Tea Company*, 100 NLRB 1494, 1495. See also *Accurate Molding Corporation*, 107 NLRB 1087, 1088; *Hydraulics Unlimited Manufacturing Co.*, 107 NLRB 1646; *Truth Tool Company*, 111 NLRB 642, 643.

in such unit and certify the results thereof to such labor organization and to the employer. [Emphasis supplied.]

Section 8 (a) (3) provides that a union may enter into a union-security agreement if the union is the exclusive representative of employees in an appropriate unit; if the union was in compliance with the provisions of Section 9 (f), (g), and (h) at the time of the execution of the agreement or within the preceding 12-month period; and if no deauthorization election has been held within the preceding 12 months. In addition to the foregoing procedural requirements under Section 8 (a) (3) for the maintenance of a deauthorization petition, that section also provides that a union-security agreement "made pursuant to Section 8 (a) (3)" must not operate to discriminate against employees for nonmembership in a labor organization except in limited circumstances, i. e., failure to tender periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership in the union.

The contract between the Employer and the Union defines the term "dues" as including "assessments" and provides that an employee may, at the behest of the Union, be discharged for failing timely to pay assessments. The requirement of payment of assessments as a condition of continued employment with the Employer clearly is not in conformity with the restrictive union-security provisions of Section 8 (a) (3). Consequently, a contract containing such a union-security clause can in no sense be said to have been made "pursuant to Section 8 (a) (3)."

While not urging that the inclusion of the "assessments" provision in its agreement with the Employer removes the agreement from the authorized limits of Section 8 (a) (3), the Union nevertheless argues that the instant petition should be dismissed because there is no showing that the contract conforms with the provisions of Section 8 (a) (3). In connection with this argument, the Union relies upon the Board's decision in *The D. M. Bare Paper Company*.⁴ In the *Bare* case, the union involved was not in compliance with Section 9 (f), (g), and (h) of the Act when it executed a contract with an employer containing an otherwise lawful union-security provision. Finding that one of the procedural conditions for the maintenance of deauthorization petitions under Section 9 (e) (1) had not been met, a Board majority concluded that the contract in question was not made "pursuant to Section 8 (a) (3)." Conceiving that this defect precluded the Board from directing a deauthorization election, the majority ordered that the petition be dismissed, pointing out that an unlawful union-security clause could be remedied under Section 8 (a) (2) and (3) and 8 (b) (2) of the Act.

⁴ 99 NLRB 1487.

We have carefully reviewed the *Bare* case and are convinced that the dismissal of a deauthorization petition which seeks to remove an unlawful union-security provision from a collective-bargaining contract is at variance with the real intent of Congress in enacting the 1951 amendments to Section 9 (e) (1). As we read the legislative history of that section, we are of the opinion that the Congress, in eliminating the union-shop authorization elections and permitting labor organizations to enter into union-security agreements without specific prior approval of the employees in the unit, nevertheless was determined that a safety valve should exist whereby the employees might rid themselves of union-security provisions which they no longer desired. To refuse to entertain and process a deauthorization petition aimed at the removal of an unlawful union-security agreement would subject the employees to continued restraint and coercion until such time as appropriate charges could be filed, processed, and adjudicated. Such a time-consuming procedure might effectively destroy the statutory right of employees to eliminate union-security agreements disapproved by a majority of the employees, and would be at war with the entire scheme and purpose of the Act. Moreover, to direct the dismissal of deauthorization petitions aimed at unlawful union-security clauses would result in favoring unions which have evinced a disregard for the provisions of Section 8 (a) (3) over labor organizations which have fully conformed their union-security agreements to the provisions of that section. We cannot conceive that Congress intended such a result. We therefore hold that a deauthorization petition should not be dismissed where the union-security clause involved exceeds the permissible limits of Section 8 (a) (3) of the Act. Accordingly, the *Bare* case, insofar as it is inconsistent with the result reached herein, is overruled. The Union's motion to dismiss the petition on the ground that there was no showing that the union-security agreement was made in conformity with Section 8 (a) (3) is therefore denied.

4. The Union and the Employer contend that the petition should be dismissed because the unit described in the petition differs from the contractual unit. The contract between the Union and the Employer grants recognition to the Union for a unit of "employees eligible to membership in the Union." The Petitioner's unit description reads "all production, shipping and maintenance workers," excluding "all foremen and clerical and supervisory personnel." The record discloses that supervisors and other classifications normally excluded from production and maintenance units have been excluded from the contractually defined unit. As the record fails to disclose that any of the production, maintenance, or shipping employees are ineligible for membership in the Union, we find that all production, shipping, and maintenance employees at the Employer's plant in New York,

New York, excluding clerical employees and all supervisors as defined in the Act, constitute a unit appropriate for the purposes of an election under Section 9 (e) (1) of the Act.

5. The Union urges that, if the Board directs a deauthorization election in this proceeding and an affirmative deauthorization vote is cast, the effect of such a vote should not immediately render the union-security clause nugatory but should be deferred until the term of the contract has run.

In *Great Atlantic & Pacific Tea Company*⁵ the Board disposed of a similar contention. In that case, a deauthorization petition was filed shortly after the execution of a 2-year contract containing a union-security provision. The union there involved contended, as does the Union herein, that an affirmative deauthorization vote should expend its force only after the 2-year contractual term had run. The Board rejected this contention.⁶ In doing so, the Board reviewed the legislative history of the 1951 amendments to Section 9 (e) (1) which eliminated union-shop authorization elections and substituted in lieu therefor provisions for elections to rescind the authority of unions to make union-security agreements. The Board noted that the congressional committees which reported on the 1951 amendments stated that "While discontinuing the mandatory election procedure which proved expensive, burdensome, and unnecessary, the bill continues to safeguard employees against subjection to union shop agreements which a majority disapproves." The Board reasoned that the authority of a union to execute a union-security agreement was subject to an immediate condition subsequent (i. e., an affirmative deauthorization vote) for, if employees under the pre-1951 statute could preclude being subjected to a union-shop clause by failing to vote the union-such authorization, then it must follow that employees under the post-1951 statute must be permitted by an affirmative deauthorization vote immediately to revoke a union-security clause if the "safeguards" against "subjection to union shop agreements" are to continue.

We have reviewed the *A & P* decision and are convinced that the reasons advanced in that decision for giving immediate effect to an affirmative deauthorization vote are sound. Accordingly, if the employees in this proceeding cast an affirmative deauthorization vote, it shall be taken to mean that the effectiveness of the union-security clause in the contract between the Union and the Employer shall be suspended immediately upon certification of the results of the election to the Union and to the Employer.

[Text of Direction of Election omitted from publication.]

⁵ 100 NLRB 1494.

⁶ Member Murdock dissented.

MEMBER JENKINS, concurring:

I join the majority of my colleagues in their decision to overrule the *Bare* case and direct an election herein. However, I am constrained to write this separate opinion because of ambiguous language in the majority opinion herein that the *Bare* case is overruled "insofar as it is inconsistent with the result reached herein." The majority does not reverse the concept of *Bare*—that the words "made pursuant to Section 8 (a) (3)" as they appear in Section 9 (e) (1) are words of limitation and not of description or identification. The *Bare* case proceeded on this erroneous concept because the Board apparently missed the essential meaning and purpose of a deauthorization election. It is immaterial whether a union-security contract is valid or invalid—because it either conforms to or exceeds the limits permissible under the Section 8 (a) (3) proviso. It is not the agreement which is the subject matter of this proceeding, but *the authority to make the agreement*. Unlike the majority herein (and that in *Bare*), I construe the words "pursuant to Section 8 (a) (3)" in Section 9 (e) (1) as being words of identification and description and not words of limitation. In that section, Congress was merely identifying and describing the type of authority employees might rescind.

One of the difficulties in the interpretation of statutes is that the English language permits a single word to have two or more significations. Which of two different meanings is to be given a statute must be determined from the context, the purpose and spirit of the Act, the surrounding circumstances, and, above all, the intention of the lawmakers. This primary consideration, the intent of Congress, is to be judged as of the time the statute or amendment was enacted. The cause or necessity or purpose of the amendment—the "evil" to be remedied—is to be considered. The cause or purpose of the amendment to Section 8 (a) (3) and the enactment of Section 9 (e) (1) was a practical one. It sought to obviate the necessity of union authorization elections which statistics showed were invariably won by the unions.

Under the amended proviso to Section 8 (a) (3), a union which meets all the conditions of the proviso has *de facto* authority to contract for a union-security clause which authority is automatically subject to the condition subsequent in Section 9 (e) (1): that it might be rescinded. The provision to Section 8 (a) (3) confers a grant of authority. Section 9 (e) (1) provides for rescinding that authority. So it is, therefore, immaterial whether the contract entered into pursuant to the exercise of the 8 (a) (3) authority is valid or not. It is the authority identified and described in Section 8 (a) (3) that is in question—not the contract.⁷

⁷ Because of my position outlined above, I necessarily agree that a contract, even a valid one, cannot be a bar to a deauthorization proceeding.

I am further borne out in my interpretation of Section 9 (e) (1) by words following "made pursuant to Section 8 (a) (3)," to wit ". . . alleging they desire that *such authority* be rescinded." [Emphasis supplied.] What authority? one may ask. The answer is the authority set forth and described in the Section 8 (a) (3) proviso. Congress had to identify the authority which is the subject matter of a Section 9 (e) (1) proceeding. The majority herein following the concept of the *Bare* opinion would equate the words "pursuant to" with "in conformity with"—language which the Board itself uses when it finds a union-security clause to be valid. Therefore, for the reasons set forth herein, I disagree with my colleagues in their application of the *Bare* concept to the words "pursuant to Section 8 (a) (3)."

With respect to that part of the *A & P* doctrine rightly confirmed herein by the majority, as to the effect of a deauthorization proceeding, I would hold that in the event of a vote rescinding the Union's authority and upon certification of such results to the parties, the maintenance of the union-security clause by operation of law is abrogated. This is by reason of the condition subsequently imposed by the provisions of Section 9 (e) (1). The authority having been revoked, the contract provision is defeated. I agree with the majority that this was the intent of Congress.

I would further hold that because of the amended proviso to Section 8 (a) (3), the Union would not be able to enter another union-security contract within the year of the deauthorization election. Congress when it amended the proviso by abolishing the necessity for a union authorization election created a new condition precedent to the exercise of the authority, reading as follows:

. . . and (ii) unless following an election held as provided in section 9 (e) within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement.

Therefore, where there is a current union-security clause and a Section 9 (e) (1) election results in a vote to rescind the union's authority, the current clause becomes void as a matter of law and the union is effectively prevented by reason of the above condition in the proviso from entering into another such clause within the year of the election.

For the above reason, I do not agree with our dissenting colleague that the Union could sit down and bargain for another security clause the day after the election.

I do agree with him that if the union-security clause in the current contract is invalid, charges of violations of Section 8 may be filed.

However, as we all know, charges sometimes take a long and tortuous course and it might well be the contract could expire before an effective Board order may be enforced. Our dissenting member, in my opinion, fails to distinguish between the absolute right of employees to rescind the grant of authority conferred by Section 8 (a) (3) and the right to file charges for violation of Section 8 by reason of invalid union-security clauses. These are different rights provided by Congress and each must be applied as the occasion arises. They are not mutually exclusive nor did Congress so intend. In the one instance, the deauthorization election provides a direct and speedy relief *instante*—the other, under Section 10, provides a remedy for past violations of Section 8 and restraint against such *in futuro*. One confers a right—the other provides a remedy for violation of a right.

MEMBER MURDOCK, dissenting:

The basic issue in this case is whether the Board may conduct a deauthorization election under Section 9 (e) (1) of the Act where a union-security provision in the contract between a union and the employees' employer does not conform to the requirements of Section 8 (a) (3). My colleagues find that a deauthorization petition may be maintained even though the union-security provision exceeds the permissible limits of Section 8 (a) (3). They also find that the effect of an affirmative deauthorization vote immediately renders the union-security provision nugatory upon certification of such results to the union and the employer. Because I believe that these findings have no support in the statute, I must dissent.

Section 9 (e) (1) of the Act authorizes the Board to direct a deauthorization election upon the filing of a petition 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)*, . . . alleging they desire that *such authority be rescinded*. . . ." [Emphasis supplied.] My colleagues and I are in agreement that the instant contract, containing a union-security provision which requires the payment of assessments as a condition of continued employment with the Employer herein, was not "made pursuant to section 8 (a) (3)" as required under Section 9 (e) (1) of the Act. We part company, however, when the majority concludes that this deauthorization petition may nevertheless be maintained despite the statute's unmistakably clear direction that an agreement "made pursuant to section 8 (a) (3)" must exist in order for the Board to conduct a deauthorization election.

In the *Bare* case, which the majority here has chosen to overrule, a Board majority marshalled the reasons why the Congress, in perfecting the 1951 amendments to Section 9 (e) (1) of the Act, could not have intended that the Board entertain deauthorization petitions where union-security clauses in a contract do not conform to the provisions of Section 8 (a) (3). The majority there noted that the legislative history of Section 9 (e) (1) indicated a congressional purpose to safeguard employees against subjection to loss of employment through *enforceable* or *effective* union-security provisions by affording employees a ready means by majority vote to rescind the authority to enter into such agreements. Where a collective-bargaining contract contains a union-security clause which exceeds the permissible limits of Section 8 (a) (3), there is no enforceable or effective union-security provision in existence under which employees could lawfully be discharged and hence there is no need for the safeguard of a deauthorization election. As the majority in *Bare* stated, any restraining effects which the existence or enforcement of an unlawful union-security agreement might have could effectively be removed under the remedies afforded by Section 8 (a) (2), 8 (a) (3), and 8 (b) (2) of the Act.

Practical considerations further support the majority's determination in *Bare*. If the Union in this case places its unlawful union-security agreement before the employees in an election and a majority vote against deauthorization, the Union would have the benefit of such a vote to exert pressure on the Employer to continue the present illegal agreement as well as to negotiate and execute future collective-bargaining contracts containing such clauses. Unless the employees file appropriate charges (a course which I would believe Congress intended they pursue in the first instance) they would thereafter be subjected to the continued coercive effect of the illegal clause for a period of at least a year inasmuch as the Board is precluded by Section 9 (e) (2) from conducting another deauthorization election for a period of 12 months from the date of the previous election. I cannot conceive that Congress intended to bestow such a benefit upon unions which execute illegal union-security agreements when, at the same time, Congress has afforded employees an effective remedy under Section 8 (a) (2), 8 (a) (3), and 8 (b) (2) by which they may rid themselves of the coercive effect of such agreements without any attendant advantage to the offending unions. In my opinion, this is precisely why Congress provided that a deauthorization petition may be maintained only where the union-security provision in the contract covering the petitioning employees was "made pursuant to section 8 (a) (3)."

There is yet another reason why I believe my colleagues are wrong in entertaining this petition and, in so doing, overruling *Bare*. Let us consider the effect of an affirmative deauthorization vote in a case involving an illegal union-security agreement and the effect of a charge filed under Section 8 of the Act. My colleagues hold that, if the employees cast an affirmative deauthorization vote in the forthcoming election, the effect of such vote will be immediately to remove the union-security clause from the contract. My colleagues do not indicate the length of time in which the Union's authority to bargain for another such clause is suspended. Conceivably, the Union could sit down with the Employer the day following certification of the results of the deauthorization election and bargain for and execute another illegal union-security agreement. If this be the case, an affirmative deauthorization vote would afford the employees a hollow, meaningless victory. Or, if the majority herein would foreclose bargaining for a union-security clause for the remainder of the term of the contract or for a period of a year from the election, the employees still could not rest assured that the Union would not obtain another illegal union-security agreement at the conclusion of those periods. On the other hand, if appropriate charges are initially filed to remove the unlawful agreement, both the Union and the Employer could then be perpetually enjoined by the Board from entering into or giving effect to such unlawful agreements. If Congress intended that employees are to be provided with any safeguards against subjection to unlawful union-security clauses, it seems patently clear that Congress intended to provide effective ones. Contrary to my colleagues, I do not believe that the direction of a deauthorization election in these circumstances accomplishes this congressional objective.

As I would dismiss the petition in this case in accord with precedent on the ground that the union-security agreement does not conform to the requirements of Section 8 (a) (3) for the maintenance of a deauthorization election, that disposes of the case as far as I am concerned. I note, however, that the majority reaffirms the *A & P* case in rejecting the Union's contention that an affirmative vote in the deauthorization election should not have the effect of immediately rendering nugatory the present union-security clause. I would not wish a failure to mention the majority's reaffirmance of the doctrine of the *A & P* case to indicate an acquiescence in the reaffirmance of the doctrine of that case in the context in which it was laid down—a valid union-security clause. I strongly dissented in that case. Obviously, however, the same considerations of injustice to the union

which I pointed out in my dissent in the *A & P* case are not equally applicable to the instant case where an invalid union-security clause is involved.

Chapman Valve Manufacturing Company and International Union of Electrical, Radio and Machine Workers, AFL-CIO, Petitioner. Case No. 1-RC-5002. December 14, 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 Thomas E. McDonald, hearing officer. 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 Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Leedom and Members Murdock and Bean].

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 organizations involved claim to represent certain employees of the Employer.

3. Relying on *Essex County News Co.*,¹ the Employer contends that its current contract with the Petitioner covering production and maintenance employees bars the instant petition because of the contractual exclusion of the employee classifications now sought by the Petitioner. However, contrary to the situation in that case, the contract here contains no promise, express or implied, that the Petitioner will refrain from seeking to represent the employees involved here. Moreover, the Board has held that the exclusion of a group of employees from a contract unit does not constitute a waiver by the contracting union of its claim to represent these employees in the future as a part of the contract unit or as a separate unit.² Accordingly, we find that the current contract does not bar a present determination of representatives in the unit of employees sought.

We find 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.

4. The Petitioner seeks to represent time-study and methods men, the ditto operators who work with the methods men, and the clerks

¹ 76 NLRB 1340.

² *United States Gypsum Company*, 107 NLRB 122, 125.

119 NLRB No. 123.