

**Coronet Manufacturing Company and Local 945, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Local 222, International Ladies' Garment Workers' Union, AFL-CIO, Party to the Contract.** *Case No. 22-CA-734. October 2, 1961*

### DECISION AND ORDER

On March 31, 1961, Trial Examiner David London issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not engaged in the unfair labor practices alleged in the complaint and recommending that the complaint be dismissed in its entirety, as set forth in the Intermediate Report attached hereto. Thereafter, the General Counsel and the Garment Workers filed exceptions to the Intermediate Report together with supporting briefs.

The Board<sup>1</sup> has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the following modifications.

As set forth in more detail in the Intermediate Report, on July 13, 1960, the Garment Workers requests recognition as collective-bargaining representative of the Respondent's production and maintenance employees and also filed a representation petition with the Board. On August 9, 1960, which was 2 days prior to the hearing on the petition, the Garment Workers called a strike against the Respondent because the Respondent had rejected the Garment Workers' demand for recognition. This strike continued until after the collective-bargaining agreement herein discussed was executed; and all but 6 or 8 of the Respondent's production and maintenance employees, ranging from 28 to 33 in number, joined the strike.

On August 11, at the hearing on the Garment Workers' petition, the Respondent and the Garment Workers signed a consent agreement fixing August 26, 1960, as the date for the election. The Respondent and the Garment Workers also agreed to meet on August 15 to determine the eligibility of voters.

Between August 11 and 15 the Teamsters intervened in the representation proceeding. The record does not show the number of cards supporting the Teamsters' intervention. Also between August 11 and 15, the Respondent expressed a belief that the Garment Workers

<sup>1</sup> 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 Rodgers, Fanning, and Brown].

represented a majority of the employees, and offered to recognize the Garment Workers without an election. In so doing, Respondent took cognizance of the number of its employees that were participating in the strike and picketing. The Garment Workers, however, rejected Respondent's offer, citing the intervention by the Teamsters in the representation proceeding.

The preelection meeting of August 15 was attended by the Respondent, the Garment Workers, and the Teamsters. The Teamsters, at that time, agreed to withdraw from the representation proceeding. On August 18, the Teamsters requested and obtained approval from the Regional Director to have its name stricken from the ballot in the election then scheduled for August 26. Thereafter on the same day, the Respondent and the Garment Workers entered into contract negotiations.

Respondent and the Garment Workers met and bargained on August 19 and 20. They had achieved substantial agreement on the terms of a contract by the close of their meeting on August 20. They apparently met on August 22 when a draft contract was prepared. Representatives of the Respondent and the Garment Workers met again at 10 a.m. on August 23 to go over the draft.

At 12 o'clock noon on August 23 the Teamsters filed a petition with the Board covering Respondent's employees. The petition was accompanied by but six cards. At 12:55 p.m., on August 23, a telegram from the Teamsters was received in Respondent's offices. The telegram notified the Respondent that the Teamsters represented a majority of the Respondent's employees, and that the Teamsters demanded recognition. The telegram further notified the Respondent that the Teamsters "have this day filed a petition for certification" with the Board.

Some 2 hours after the Teamsters' August 23 telegram was received in Respondent's offices, the representatives of the Respondent and the Garment Workers executed a bargaining agreement. The evidence conflicts as to whether the representatives learned of the contents of the telegram before they executed the contract. The Trial Examiner found specifically that the Garment Workers' representatives did not acquire such knowledge. In the view we take of this case, it matters not whether the representatives—Respondent's or the Garment Workers'—had such knowledge. Consequently, for decisional purposes, we assume that both Respondent and the Garment Workers were fully aware of the contents of the telegram before their bargaining contract was executed.

We find no merit in the contention of the General Counsel that the Respondent, by entering into an exclusive bargaining contract with the Garment Workers in the face of the Teamsters' demand for recognition and its pending petition, violated the Act under the *Midwest*

*Piping*<sup>2</sup> doctrine. A violation under *Midwest Piping* must be founded upon the existence of a real question concerning representation. Additionally, the burden of establishing facts to support the alleged violation rests on the General Counsel who must show, as part of his *prima facie* case, that such real question concerning representation existed when the contract was executed.<sup>3</sup> The issue here is whether the General Counsel has met this requirement.

In *Shea Chemical Corporation*, the Board took cognizance of the effect of a petitioner's showing of interest in creating a real question concerning representation in the two-union *Midwest Piping* kind of situation. In that case, the Board, finding that such a real question existed, emphasized the fact the petition in question was "supported . . . by an adequate administrative showing of interest."<sup>4</sup> In this case, by contrast, the Teamsters supported its petition by but six cards. Six cards, where there is a unit of approximately 30 employees, does not satisfy the Board's 30-percent rule, and is obviously not "an adequate administrative showing of interest." Nor do we agree with the contention of the General Counsel that by adding these six cards to an *undisclosed* and *indeterminate* number of cards allegedly filed by the Teamsters in support of its previous intervention, the patent defect in the Teamsters' showing is made good. In these circumstances, then, we cannot say that the Teamsters' petition had the effect of raising a real question concerning representation.

Furthermore, we find, as did the Trial Examiner, that the equivocal conduct of the Teamsters does not show a sincere interest in the determination of a collective-bargaining agent for the Respondent's employees. We note particularly that the Teamsters filed its petition only 5 days after it had withdrawn from the representation proceeding then pending on the Garment Workers' petition. The Teamsters, by its earlier intervention in that proceeding, had compelled the Garment Workers to refuse to accept the Respondent's offer of recognition. Its withdrawal of intervention in that proceeding evidenced not only the abandonment of its claim, but also induced the Garment Workers to accept the Respondent's offer of recognition which brought about the negotiations between the Respondent and the latter union. In this latter connection, we note specifically that the record reveals that a majority of the Respondent's production and maintenance employees had participated in the strike called by the Garment Workers at the time the contract here in question was executed. Accordingly, we conclude that the latter union did indeed represent a majority of Respondent's employees at the time the contract was signed.

<sup>2</sup> *Midwest Piping & Supply Co., Inc.*, 63 NLRB 1060.

<sup>3</sup> *William Penn Broadcasting Company*, 93 NLRB 1104, 1105-1106.

<sup>4</sup> *Shea Chemical Corporation*, 121 NLRB 1027, 1028-1029.

Therefore, viewing the case in its entirety, we find that the General Counsel has failed to establish that a real question concerning representation existed at the time that the collective-bargaining agreement between the Respondent and the Garment Workers was executed. Accordingly, we conclude that the Respondent did not violate Section 8(a) (2) and (1) of the Act as alleged in the complaint.

[The Board dismissed the complaint.]

## INTERMEDIATE REPORT

### STATEMENT OF THE CASE

Upon a charge filed by Local 945, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereinafter called the Teamsters, the General Counsel of the National Labor Relations Board, by the Regional Director for the Twenty-second Region, issued his complaint against Coronet Manufacturing Company, herein called Respondent. With respect to the unfair labor practices, the complaint alleges, in substance, that on August 23, 1960, Respondent and Local 222, International Ladies' Garment Workers' Union, AFL-CIO, herein called the Garment Workers, executed a collective-bargaining agreement effective from August 22, 1960, to August 22, 1963, relating to hire, tenure, and terms and conditions of employment of Respondent's employees, with knowledge of, and subsequent to, the Teamsters' demands for recognition made on the same day, and with knowledge of and subsequent to the filing of a petition by the Teamsters for certification as the collective-bargaining representative of Respondent's employees. The complaint also alleges that said collective-bargaining agreement contains a union-security clause which is violative of the Act. The answers of both the Respondent and the Garment Workers admitted the execution of a collective-bargaining agreement on August 23, 1960, but denied the commission of any unfair labor practice.

Pursuant to notice, a hearing was held before the duly designated Trial Examiner at Newark, New Jersey, September 26-29, 1960. All parties were represented by counsel or other representative and were given full opportunity to be heard, to examine and cross-examine witnesses, and to introduce relevant evidence. Since the close of the hearing, an exhaustive brief has been received from the Garment Workers which has been duly considered.

Upon the entire record in the case,<sup>1</sup> and from my observation of the witnesses at the hearing, I make the following:

### FINDINGS OF FACT

#### I. THE BUSINESS OF RESPONDENT

Respondent is a corporation duly organized under, and existing by virtues of, the laws of the State of New Jersey. At all times material herein, Respondent has maintained its principal office and place of business in Union City, New Jersey, where it is, and has been, engaged in the manufacture, sale, and distribution of knitted outerwear and related products. During the year preceding the filing of the complaint herein, Respondent, in the course and conduct of its business operations, caused to be manufactured, sold, and distributed products valued in excess of \$50,000 of which products valued in excess of \$50,000 were shipped from said plant in interstate commerce directly to States of the United States other than the State of New Jersey. Respondent admits, and I find, that it has been at all times material herein engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

#### II. THE LABOR ORGANIZATIONS INVOLVED

Both the Garment Workers, and the Teamsters, are labor organizations within the meaning of Section 2(5) of the Act.

<sup>1</sup> The Garment Workers' motion, made on or about November 7, 1961, to make 14 corrections in the transcript of testimony is hereby granted. It is further ordered, *sua sponte*, that line 21, page 14, of said transcript be corrected by striking therefrom the last word, "letter," and substituting therefor the word "matter."

## III. THE ALLEGED UNFAIR LABOR PRACTICES

The Garment Workers began its drive to organize Respondent's production and maintenance employees in the latter part of 1959. On July 13, 1960, it filed its petition with the Board, in Case No. 22-RC-903, seeking certification as collective-bargaining representative for those employees. Pursuant to that petition, the Board's Regional Director, on July 22, issued a notice fixing August 11, 1960, as the date for the formal hearing on that petition.

Before that hearing took place, the Garment Workers, on August 9, called and imposed a strike against Respondent. Pickets were deployed in front of Respondent's premises and constantly maintained there until the strike was terminated on August 23 under circumstances hereafter detailed. All but 6 to 8 of Respondent's employees participated in that strike.<sup>2</sup>

At the formal hearing in Case No. 22-RC-903 on August 11, Respondent appeared with its attorney and stated that it would not be unwilling to consent to an election provided it was conducted 4 or 6 weeks hence. The Garment Workers objected to so long a delay, and the parties finally agreed upon August 26 as the date for the election and both parties signed a consent-election agreement. The parties also agreed upon an election conference to be held on August 15 to determine the eligibility of voters. At an undisclosed date thereafter, but before August 15, the Teamsters intervened in Case No. 22-RC-903, demanding a place on the ballot at the coming election.

Prior to the conference of August 15, Paul Falk, president of Respondent, called Peter Detlefsen, manager of the Garment Workers, and informed him that at the suggestion of Joseph Oberwager, Respondent's attorney, he was contacting Detlefsen because they "ought to get together." Detlefsen declined to discuss the matter and suggested to Falk that Oberwager contact Irving Leuchter, the attorney for the Garment Workers.

Oberwager called Leuchter and told him that he had conferred with his client and had concluded that in view of the number of employees participating in the strike and picketing, they were convinced that the Garment Workers represented a majority of the employees and, because the strike was causing his client great economic loss, Respondent was willing to recognize the Garment Workers, enter into a collective-bargaining agreement with that organization, and thereby have the strike terminated. Leuchter told Oberwager that, in view of the intervention by the Teamsters in the representation proceeding, immediate recognition of, and negotiation with, the Garment Workers would "cause litigation, legal difficulties." In order to alleviate the situation, however, Leuchter recommended that the date of the election be advanced and suggested that this matter be further explored at the election conference on August 15.

At that conference, attended by Leuchter, Oberwager, and Daniel Eile as representative of the Teamsters, Oberwager repeated that Respondent was convinced that the Garment Workers represented a majority of the employees and that it was prepared to recognize that organization. Leuchter reiterated that because of the Teamsters' intervention this could not be done and again suggested that the date of the election be advanced. Eile, however, refused to agree to this suggestion.

Oberwager suggested to Leuchter that he step outside the conference room where he again urged Leuchter to accept recognition and to dispose of the matter, repeating several times that Respondent was convinced that the Garment Workers represented a majority of the employees. When Leuchter repeated that the only thing that could be done would be to get an agreement to advance the date of the election, Oberwager asked why Eile did not go along with that recommendation. Leuchter replied that he did not know but suggested that Eile be called out of the conference room to join the two men. This was done and Eile informed the two men that, while he would not agree to advance the date of the election, the Teamsters were prepared to withdraw from the representation proceeding and assured them that his organization would not appear on the ballot on any election that might be held. Oberwager asked Leuchter whether he was satisfied with that solution of the problem and was told that he was, but that he would have to take the matter up with his client.

After conferring with representatives of the Garment Workers, Leuchter called Oberwager and told him that if the Teamsters withdrew, or entered into some kind of satisfactory commitment that they would withdraw, the Garment Workers would enter into negotiations with Respondent but would continue the strike until a contract was signed. At the hearing before me, the parties stipulated that on August 18 the Teamsters requested the Board that its name be stricken off the ballot in the

<sup>2</sup> The parties stipulated that during all times relevant herein, the number of production and maintenance employees employed by Respondent ranged from 28 to 33

election then scheduled for August 26. The Board's Regional Director approved the request on the same day, August 18.

Bargaining conferences between Respondent and the Union also began on the same day and were continued on August 19, and Saturday, August 20, at the conclusion of which the parties were in agreement on "basic conditions," and agreed to meet in Leuchter's office on Monday, August 22, to draft the written contract. This was apparently done as scheduled, for Falk appeared in the office of Oberwager, Respondent's attorney, at 10 a.m. on the following morning, August 23, "to go over" the contract with Respondent's lawyer. Detlefsen participated in that conference which resulted in certain changes being made by Oberwager and noted on the single draft which the three men had before them.

Falk and Detlefsen left Oberwager's office at 12:05 p.m. and arrived at Leuchter's private office, one of a large suite of rooms, about 10 minutes later so that Leuchter could make the changes on the remaining copies of the contract in accordance with the notations made in Oberwager's office. After spending about half an hour with his callers in a discussion of those changes, Leuchter called his secretary to make the changes agreed upon, the principal one requiring a retyping of one page of the rider attached to the contract. Instead of going out for lunch, it was decided that sandwiches should be sent for, and the three men entered the library adjoining Leuchter's private office. The secretary returned to the library with the product of her work about 15 minutes later while Leuchter was engaged in making the necessary remaining corrections on all the copies of the 16-page contract and 4 pages of attached memorandum so as to conform to Oberwager's suggestions.

While the three men were engaged in that task at a large table in the library, Violet Meaney, the telephone operator and receptionist in Leuchter's office, entered the library and placed a note in front of Falk advising him that there was a call from his office. Falk followed her out of the library and asked where he could take the call. She directed him to a room in the suite, some distance from the library and which was not then occupied, where Falk engaged in a telephone conversation<sup>3</sup> concerning the following telegram from the Teamsters received at Respondent's office at about 12:55 p.m.:

PA096 SSF366

1960 Aug 23 AM 11 09

P NKB113 LONG RX PD=NEWARK NJER 23 1042A EDT=

CORONET MANUFACTURING Co=

2105 Kerrigan Ave Union City NJER=

As attorney for and on behalf of Local 945, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, I herewith notify you that said organization has been selected as sole collective bargaining agent by a majority of your production and maintenance employees, exclusive of office clerical and supervisory employee and such other categories of employees as may be required to be excluded by the National Labor Relations Act, as amended; and said organization herewith demands that you recognize it as such sole and exclusive representative on behalf of said employees for purposes of collective bargaining in regard to wages, hours, and other terms and conditions of employment. Please advise. You are required by law to refrain from recognizing or entering into contractual relations with any other labor organization. Please be advised further that I have this day filed a petition for certification with the NLRB, 22nd Region=

ROTHBARD, HARRIS, and OXFELD by:  
SAMUEL L. ROTHBARD.

The Teamsters' petition referred to in the telegram was filed in the Board's office at 12 m. of August 23, as Case No. 22-RC-947, accompanied by six "cards" otherwise unidentified in the record.

Mrs. Falk testified that she read the foregoing telegram to her husband "word for word" and that "he repeated . . . as if somebody were there in the room with him." On cross-examination, however, she confessed that she could not testify that she heard him "repeat some portion of the telegram to someone else," and that she had arrived at that conclusion because he so informed her after he returned to Respondent's office. Falk testified, several times, that she did *not* read the telegram

<sup>3</sup>I do not credit Falk's testimony that this conversation took place while the three men were still in Leuchter's private office and that Leuchter handed him the telephone to take the call.

"word for word"; that, in fact, he told her *not* to "read it to [him] word for word";<sup>4</sup> that he could not testify that she read to him the following portion thereof: "Please be further advised that I have filed a petition this day"; that after the call was completed, he told Detlefsen and Leuchter that he was again having "trouble from the Teamsters," that they had sent a telegram.

Leuchter and Detlefsen both testified that when Falk returned to the library after taking his call elsewhere, he told them *nothing* about the subject of that call. I am unable to believe or find that Leucher, who impressed me as being an able lawyer well versed in labor law, and who had scrupulously rejected several earlier offers by Respondent to recognize the Garment Workers as collective-bargaining representative because of the intervention by the Teamsters, would, only a few days later, deliberately shut his eyes and blindly consummate a contract with Respondent notwithstanding notice that the Teamsters were again challenging his client's representative status.

By reason of the foregoing, together with my observation of the demeanor of the four witnesses involved as they testified and the contradictory and evasive nature of the testimony of the two Falks, I credit the testimony of Leuchter and Detlefsen that Falk made no mention of the subject of his telephone conversation with his wife when he returned to the library. I further find that shortly after Falk rejoined Leuchter and Detlefsen, the assembling of one copy of the agreement was completed and signed by both parties.

When that task was completed, Falk asked whether the assembling and execution of the remaining copies of the contract could be postponed, and instead, that word be immediately conveyed to the plant that the contract was signed so that the pickets could be removed and the normal dispatch of merchandise from the plant be immediately resumed. No objection being voiced thereto, Falk went to the telephone in the library, called his wife at the plant, and informed her that the contract had been signed and that Detlefsen wanted to speak to one of the pickets. Nadler, a business agent for the Garment Workers, was called to the telephone at the plant, and was informed by Detlefsen that the strike was settled and that the pickets could be released. Detlefsen's instructions were complied with.

After Detlefsen completed his talk with Nadler, Falk, for the first time informed Leuchter that his wife told him that a telegram had been received from the Teamsters making "some kind of demands [and that they] shouldn't make a contract." However, he made no mention of a petition.

#### Issues and Concluding Findings

Though other issues were sought to be interjected, my function herein is limited to consideration of the allegations of the specific violations of the Act raised in the General Counsel's complaint. These are twofold (a) that Respondent and the Garment Workers executed their collective-bargaining agreement on August 23 "with knowledge of and subsequent to [the Teamsters'] demand for recognition . . . and with knowledge of and subsequent to the filing of the petition" by the Teamsters, and (b) that the agreement with the Garment Workers contained, *inter alia*, the following union-security provision: "Membership in the Union in good standing shall be a condition of employment for all employees on and after the thirtieth day following the beginning of such employment or the execution or effective date of this provision, whichever is the later, but not before completion of the worker's trial period." Both allegations are charged to be violative of Section 8(a)(1) and 8(a)(2) of the Act.

Treating these contentions in reverse order, I find nothing illegal in the union-security clause quoted above. Though, superficially, it bears some resemblance to similar clauses which the Board has held as falling short of the grace period allowed by the proviso to Section 8(a)(3) of the Act,<sup>5</sup> the clause under consideration is couched in the *very language of the proviso* to that section<sup>6</sup> and is, therefore, found not to be in violation thereof.

<sup>4</sup> But in affidavit he had given to the Board about a month earlier, Falk stated that he "repeated to Mr. Detlefsen and Mr. Leuchter as [his] wife read it over the phone to [him]"

<sup>5</sup> Cases dealing with contract provisions requiring union membership "*within 30 days*" of employment or the execution or effective date of such provision, whichever is later. See, however, the dissent of Member Kimball in *Industrial Rayon Corporation*, 130 NLRB 427.

<sup>6</sup> "Provided, That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization . . . to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later. . . ."

The remaining issue for determination is whether, in the circumstances existing here, Respondent has disregarded the Board's *Midwest Piping* doctrine,<sup>7</sup> as implemented in later Board decisions, by signing the contract on August 23 after the Teamsters had made its telegraphic demand and filed its petition with the Board. Broadly speaking, that doctrine holds that an employer violates the Act by recognizing or bargaining with a union in the face of a claim by a rival union and which claim raises a *real question* concerning the representation of the employees involved.

However, a real question concerning representation does not exist unless the record establishes that the challenging party, the Teamsters herein, made an adequate showing of interest in that question, and that such interest existed at the time the contract was executed.

"In the present case, as in all cases, the burden of establishing the facts to support the violation alleged in the complaint rests upon the General Counsel. Thus, it was incumbent upon the General Counsel to prove that a *real question* concerning representation existed when the Respondent [executed its contract with the Garment Workers on August 23, 1960]. Consequently, among other things, it was necessary that the General Counsel, to establish his *prima facie* case, *produce evidence* that the representation claim" of the Teamsters was supported by an adequate showing of interest. *William Penn Broadcasting Company*, 93 NLRB 1104.

During the hearing before me, the General Counsel repeatedly took the position that "this matter of interest . . . is a matter of administrative determination . . . and not litigable." In pursuit of that theory, he contended this administrative determination has "apparently" been made, because "otherwise, pursuant to the Board's Rules and Regulations, the [Teamsters'] petition would no longer be pending." Accordingly, the General Counsel not only resisted all attempts by the Garment Workers to show a lack of sufficient interest by the Teamsters to raise a real question of representation, i.e., that at the critical time herein the Teamsters had not been designated as a bargaining representative by at least 30 percent of Respondent's employees as required by Section 101.18 of the Board's Statement of Procedure, Series 8, but he made no attempt to even establish that such an administrative determination had *in fact* been made.<sup>8</sup> In short, his consistent position was that this issue was not litigable in this unfair labor proceeding, a position which I cannot sustain.

While the General Counsel's contention has been sustained when invoked in representation cases, the Board, in its Annual Reports summarizing its decisions, took pains to enter a *caveat* that the rule contended for was limited to representation proceedings. Thus, in its 1959 Annual Report,<sup>9</sup> the Board states: "The sufficiency of a party's showing of interest is determined administratively and may not be litigated *at the representation hearing*." [Emphasis supplied.]

No case has been cited to me, nor have I been able to find any, which holds that an employer is guilty of rendering unlawful assistance to a union by entering into a contract with that union merely upon a showing that a petition for representation was earlier filed by another labor organization.<sup>10</sup> The critical, indeed the determinative, fact is not whether a mere demand for recognition was made, and/or such a petition has been filed. "The petition is nothing more than another 'naked claim of representation.'" *Boston Quilting Corporation and National Wadding Co., Inc.*, 115 NLRB 491. Instead, Respondent's conduct, and its contract with the Garment Workers, can be condemned in this unfair labor practice proceeding only if a real question of representation existed at the time the agreement was executed. The General Counsel having chosen to offer no proof that such a question existed, other than the filing of the petition, and the telegraphic demand, I can only conclude that he has failed to prove an essential element of his case.<sup>11</sup> That conclusion is peculiarly appropriate here where the Garment Workers, by its answer and third affirmative defense, specifically denied the existence of any real

<sup>7</sup> *Midwest Piping & Supply Co., Inc.*, 63 NLRB 1060.

<sup>8</sup> In this connection, it will be recalled that though Respondent employed 28 to 33 employees, only 6 unidentified cards were filed with the Teamsters' petition, and that only 6 "employees," also unidentified as to classification, did not participate in the Garment Workers' strike when it began and that this number never exceeded 8 "employees."

<sup>9</sup> Page 14 thereof; see also the Board's 1958 Annual Report, page 14

<sup>10</sup> *Shea Chemical Corporation*, 121 NLRB 1027, and *Swift and Company*, 128 NLRB 732, are inapposite. In both cases, the Board found that the petition was supported by an administratively determined showing of interest

<sup>11</sup> See *Associated Machines, Inc.*, 114 NLRB 390, 398-399.

issue concerning representation by reason of the absence of an adequate and valid showing of interest.

Whatever the reasons are for applying the rule of nonlitigability of the sufficiency of a challenging party's showing of interest in a representation proceeding, they have no place in this unfair labor practice proceeding. A respondent in the latter type of proceeding is denied due process of law if he is required to accept, without opportunity to challenge, the prosecutor's unsubstantiated statement that a condition precedent to his request for injunctive relief against that respondent has been complied with.<sup>12</sup>

Another, and perhaps even a more compelling, reason why the allegations of the complaint under consideration should be dismissed is that, in my opinion, the processes of the Board have here been invoked by the Teamsters, not to further the underlying objectives of the Act, but to frustrate and paralyze a lawfully established collective-bargaining relationship by the most devious of maneuvers.

It must be recognized that no one in this proceeding has denied that the Garment Workers, on August 23, represented a majority of Respondent's production and maintenance employees. Thus, though the complaint alleges two *specific* grounds for setting aside the collective-bargaining relationship now existing between Respondent and the Garment Workers, no claim is made that the General Counsel is entitled to the injunctive relief sought herein because the Garment Workers did not, in fact, represent a majority of Respondent's employees on August 23. Indeed, no such challenge could be made in light of the stipulation entered into during the hearing, in which stipulation the Teamsters joined, that the Garment Workers had "22 signed cards" out of an appropriate unit of 28 to 33 employees,<sup>13</sup> and the undisputed evidence that all but approximately 6 employees participated in the Garment Workers' strike.<sup>14</sup>

Under these circumstances, the Teamsters' withdrawal of intervention in Case No. 22-RC-903 is understandable. It realized that if it allowed the pending election requested by the Garment Workers to take place it would result in certain defeat for the Teamsters, and certification of the Garment Workers, with its attendant advantages to that organization. Accordingly, on August 18, 3 days after it promised to do so, the Teamsters withdrew its intervention.

By that withdrawal, the Teamsters not only evinced its abandonment of all interest in the determination of a bargaining representative for Respondent's employees, but it also thereby induced Respondent and the Garment Workers to negotiate and consummate their contemplated collective-bargaining agreement. In that state of the record, it became incumbent upon the General Counsel to show some sufficient intervening factor justifying the Teamsters' conduct on August 23 in filing, both the petition in Case No. 22-RC-947, and the charge in the instant proceeding. This, he has failed to do. Indeed, by filing its unfair labor practice charge herein, the Teamsters prevented the Board from promptly proceeding on the *Teamsters'* own representation petition.

Under the circumstances existing here, the totality of the Teamsters' conduct demonstrates no sincere interest in the right of employees to bargain collectively through their duly chosen representative. Instead, it points to a "dog in the manger" attitude and a willingness to resort to a campaign of subterfuge in an attempt to sustain turmoil among Respondent's employees, and to keep the Garment Workers from exercising the duties imposed upon that organization by law. Neither the General Counsel, nor the Board, should lend itself to such a campaign; to do so would constitute an abuse of the Board's processes. It is, therefore, recommended that the complaint be dismissed in its entirety.

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

<sup>12</sup> In view of my disposition of this issue, I find it unnecessary to consider the exhaustive argument of the Garment Workers that all the facts heretofore found pertaining to the Teamsters' telegram, and the extent to which its contents were communicated to Falk, are not sufficient to establish that Respondent had notice of the filing of the petition before the contract was signed.

<sup>13</sup> The General Counsel specifically disavowed any intention to "challenge the validity" of these cards.

<sup>14</sup> "A Board election is not the only method by which an employer may satisfy itself as to the union's majority status." *United Mine Workers v. Arkansas Oak Flooring Co.*, 351 U.S. 62, 72, footnote 8. It may do so by a showing of written authorization, or by employee participation in a strike called by their union *Lebanon Steel Foundry v. N.L.R.B.*, 130 F. 2d 404 (C.A.D.C.); *N.L.R.B. v. Samuel J. Kobritz, d/b/a Star Beef Company*, 193 F. 2d 8, 14 (C.A. 1)

## CONCLUSIONS OF LAW

1. The operations of Respondent occur in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Garment Workers and the Teamsters are labor organizations within the meaning of Section 2(5) of the Act.
3. Respondent has not engaged in unfair labor practices as alleged in the complaint.

[Recommendations omitted from publication.]

**Sheet Metal Workers' International Association, Local Union  
No. 3, AFL-CIO and Siebler Heating & Air Conditioning, Inc.**  
*Case No. 17-CC-122. October 3, 1961*

## DECISION AND ORDER

On March 6, 1961, Trial Examiner Thomas R. Kessel issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action as set forth in the Intermediate Report attached hereto. Thereafter, the General Counsel filed exceptions to the Intermediate Report and a supporting brief.

The Board<sup>1</sup> has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner except as modified herein.

We find, like the Trial Examiner, that the Respondent violated Section 8(b)(4)(i) and (ii)(B) of the Act by picketing the construction sites of Patrick Construction Company and Anderson Construction Company with an object of forcing or requiring Patrick and Anderson to cease doing business with Siebler Heating & Air Conditioning, Inc., and of forcing or requiring Siebler to recognize and bargain with the Respondent although the Respondent had not been certified as the bargaining representative of Siebler's employees. However, although they concur in the Trial Examiner's ultimate finding, Board Members Fanning and Brown do not adopt in full the basis upon which the Trial Examiner's finding is grounded. They rely, instead, solely on the fact that the picketing occurred at the Patrick and Anderson construction sites at times when no employees of Siebler, the primary employer, were present. Picketing at the

<sup>1</sup> 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 Rodgers, Fanning, and Brown].