

Compliance Status of International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers, and Helpers, AFL-CIO, and Local 609, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers, and Helpers, AFL-CIO

Plant City Welding and Tank Company and International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers, and Helpers, AFL-CIO

Plant City Welding and Tank Company and International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO, Petitioner. Cases Nos. 12-CA-262 and 12-RC-30. October 16, 1961

**SUPPLEMENTAL ADMINISTRATIVE DETERMINATION
OF COMPLIANCE STATUS**

and

**SUPPLEMENTAL DECISION AND ORDER IN CASE
NO. 12-CA-262**

and

ORDER REVOKING CERTIFICATION OF REPRESENTATIVES IN CASE NO. 12-RC-30

On March 31, 1959, pursuant to a petition by Plant City Welding and Tank Company,¹ an employer in interest in certain proceedings then pending before the Board, an Administrative Determination of Compliance Status² was issued by the Board, which was based upon a report of an administrative investigation conducted by the Board's Regional Office for the Twelfth Region on behalf of the Board. The Board therein determined that International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers, and Helpers, AFL-CIO,³ was in compliance with Section 9(f), (g), and (h) of the Act at all times with respect to its filings for its fiscal years 1947 through 1957. It was also determined therein that Local 609, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers, and Helpers, AFL-CIO,⁴ was in compliance insofar as its filings for its fiscal years ending December 31, 1956, and December 31, 1957, were concerned, but not for its fiscal year ending December 31, 1955, and that Local 609 was therefore not in compliance during the calendar year 1956.

¹ Hereinafter referred to as Plant City.

² 123 NLRB 492.

³ Hereinafter referred to as the International.

⁴ Hereinafter referred to as Local 609.

In reliance on that determination, the Board, on May 14, 1959, issued its Decision and Order in Case No. 12-CA-262⁵ denying the motion of *Plant City*, which was the respondent therein, to dismiss the complaint on the ground of noncompliance with Section 9(f),(g), and (h) of the Act, and finding that *Plant City* had violated Section 8(a)(5) and (1) of the Act by refusing to bargain collectively with the International although it had been certified by the Board on October 24, 1957,⁶ following a Board-directed election. Thereafter, the Board sought enforcement of its Order by a petition to the U.S. Court of Appeals for the Fifth Circuit, and *Plant City* filed a cross-petition for review of the said Administrative Determination of Compliance Status.⁷ In connection therewith, the court ordered the Board to file a transcript of the compliance proceedings and a more definite certified list, and stated that the Board might avail itself of rule 38 of the court's rules and file a certified list adequately describing the various documents, exhibits, testimony, etc.⁸ Pursuant to that order, the Board made available certain material, but on further motion by *Plant City*, the court held this material to be insufficient. The court thereupon remanded the case to the Board "to review the administrative finding to ascertain whether it is adequately supported by the filings of the complaining union," with directions to incorporate into the record the material assembled during the investigation and to consider whether such material supports the report of the administrative investigation.⁹

Pursuant to the said remand and directions, the Board has caused such material to be filed with it, and that material is hereby made a part of the record in this proceeding.

Upon consideration, as directed by the court, of the record as thus enlarged, we affirm the findings of fact and conclusions of law heretofore made except as modified below.

Section 9(f) of the Act¹⁰ required that any union seeking to avail itself of the Board's processes should first file a financial report with the Secretary of Labor "in such form as the Secretary may prescribe" and show that it "furnished to all its members . . . copies of the . . . report required . . . to be filed with the Secretary of Labor." In our previous determination we concluded that the International had at all times made available to its membership the financial data as required, by virtue of its publication in its journals of the annual "Summary of Funds" with a letter informing its members that the detailed financial

⁵ *Plant City Welding and Tank Company*, 123 NLRB 1146.

⁶ *Plant City Welding and Tank Company*, 119 NLRB 131.

⁷ See *N L.R.B. v. Plant City Welding and Tank Co.*, 275 F. 2d 859 (C.A. 5.)

⁸ *Ibid.*

⁹ *N L R B v. Plant City Welding and Tank Co.*, 281 F. 2d 688 (C.A. 5)

¹⁰ This provision was repealed on September 14, 1959 (Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, Title II, sec 201(d)).

report was available for examination upon request to the financial secretary of the Local Union. However, our comparison of the financial report filed by the International with the Secretary of Labor for its fiscal year ending June 30, 1957, in compliance with new regulations issued by the Secretary, which report is now part of the enlarged record, with the detailed financial report for that year which was made available to the membership through the Local, reveals that the latter report was not a copy of that filed as required by the Secretary.

The regulations initially promulgated by the Secretary, which remained in effect for the fiscal years ending before June 30, 1957, set forth a form which required only that the report disclose financial information in the categories set forth in the statute. It specifically provided, however, that in lieu of completing and filing the prescribed form, "the annual financial report prepared by most unions may be used for this purpose as long as such report contains the above information."¹¹

On June 13, 1957, the Secretary of Labor promulgated new regulations prescribing a form, the use of which was mandatory for the reporting of fiscal information for years ending on or after June 30, 1957.¹² In addition to prescribing detailed operating statement and balance sheet forms, the regulations required the filing of schedules designed to disclose, *inter alia*, any outstanding loans, or advances or repayments of loans, to union officials or staff members; extraordinary items of income or disbursement; investments in land and buildings; and gifts or grants to officers not reported as salary or allowances. The International filed a report on that form for its fiscal year ending June 30, 1957.¹³ In addition it filed a copy of its detailed financial report and of the "Summary of Funds," as it had in the past. Although the detailed financial report was made available to members and the "Summary of Funds" was distributed as in prior years, there is nothing in the record to suggest that the International took any actions designed to make available to its members copies of the financial report on the form then required by the new regulations. Similarly, although Local 609 took its usual steps to post and publish the auditor's report for its fiscal year ending December 31, 1957, it does not appear that any steps were taken to publicize the report form required by the regulations.

The Supreme Court has made it clear that a regulation promulgated pursuant to an express grant of authority in a statute has an authority equivalent to the statute itself unless it can be found "to be the expres-

¹¹ 12 F.R. 5459-5460, August 12, 1947.

¹² 22 F.R. 4158-4160

¹³ A copy of the form filed by the International was submitted by it. Although the record does not contain a copy of the form filed by Local 609, the Secretary of Labor has sent the Board its usual certification that the Local has filed the required form for its fiscal year ending December 31, 1957.

sion of a whim rather than the exercise of judgment.”¹⁴ That the 1957 regulations were clearly within the bounds of the Secretary’s administrative powers has not been, and could not be, questioned.

Under these circumstances, we have no discretion to accept as compliance with the requirements of Section 9(f) and (g) anything less than the availability to the union membership of a copy of the financial report in the form required to be filed with the Secretary of Labor under the 1957 regulations. As such copies were not so available, we must conclude that the International was not in compliance with the requirements of that section after June 30, 1957, and Local 609 was not in compliance after December 31, 1957.

Moreover, we note, without suggesting that any improprieties were involved, that the International’s detailed financial statement which was made available to its members did not set forth certain transactions which were required in the reports and schedules filed by it under the new regulations. Under these circumstances, even assuming that it were within the Board’s discretion to accept as compliance the fact that a union actually made available in a different format the information required by the prescribed form, we could not find that all the requisite information was made available, and we would be impelled to reach the above conclusion.

Accordingly, our aforesaid Administrative Determination of Compliance Status is hereby amended, in accordance with the above findings.

IT IS THEREFORE ADMINISTRATIVELY DETERMINED that International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers, and Helpers, AFL-CIO, was in compliance with Section 9(f), (g), and (h) of the Act at all times up to June 30, 1957, but was not in compliance with Section 9(f) (B) (2) and (g) of the Act during its fiscal year ending June 30, 1958; and that Local 609, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers, and Helpers, AFL-CIO, was not in compliance with Section 9(f) (B) (2) and (g) of the Act during the calendar years 1956 and 1958, but was in compliance at all other times prior to January 1, 1958.

IT IS HEREBY ORDERED that any letters of compliance issued to International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers, and Helpers, AFL-CIO, during its fiscal year ending June 30, 1958, and to Local 609, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers, and Helpers, AFL-CIO, during the calendar years 1956 and 1958 be, and they hereby are, declared null and void and without effect.

¹⁴ *American Telephone and Telegraph Co. v. United States*, 299 US 232, 236-237. Such a regulation has been distinguished as “legislative” by comparison to regulations issued under a general grant of authority which are “interpretive.” 1 Davis—Administrative Law Treatises (1958), par 5 03-5 04, pp. 298-314.

In light of the above, it becomes necessary to determine whether the International and Local 609 were in compliance with Section 9(f), (g), and (h) of the Act at the crucial times of the representation and unfair labor practice proceedings. Although both the International and Local 609 were in compliance on June 21, 1957, when the Board's Decision and Direction of Election was issued,¹⁵ the International was out of compliance after June 30, 1957. Therefore, it had not met the requirements of the Act at the time of the election on July 19, 1957, the certification on October 24, 1957, and the filing of the charge on November 29, 1957. And neither the International nor the Local was in compliance when the complaint was issued on January 31, 1958, and the hearing was held on February 25, 1958. As the Act specifically prohibited the investigation of a question of representation or the certification of a labor organization in a representation proceeding or the issuance of a complaint in an unfair labor practice proceeding where the filing labor organization had not satisfied such requirements, the certification must be revoked and the complaint dismissed.

[The Board¹⁶ revoked the certification of International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers, and Helpers, AFL-CIO, issued on October 24, 1957, in Case No. 12-RC-30, and set aside the Order issued on May 14, 1959, in Case No. 12-CA-262 and dismissed the complaint.]

MEMBER RODGERS took no part in the consideration of the above Supplemental Administrative Determination of Compliance Status and Supplemental Decision and Order in Case No. 12-CA-262 and Order Revoking Certification of Representatives in Case No. 12-RC-30.

¹⁵ 118 NLRB 280.

¹⁶ Member Fanning dissented in *Compliance Status of International Brotherhood of Boilermakers etc.*, 123 NLRB 492, and *Plant City Welding and Tank Company*, 123 NLRB 1146, the antecedent determinations which are herein being reversed.

May Department Stores, Inc., Kaufmann Division and Rosella Danknick

Office Employes International Union, Local No. 33, AFL-CIO and Rosella Danknick. *Cases Nos. 6-CA-1976 and 6-CB-687.*
October 17, 1961

DECISION AND ORDER

On January 16, 1961, Trial Examiner Wellington A. Gillis issued his Intermediate Report in the above-entitled proceeding, finding that
133 NLRB No. 100.