

not prohibited by the Act. Had the Respondent sought to apply its union-shop clause to Crume, a different situation might exist, but it did not do so.

Because I have found that the Respondent did not cause or attempt to cause an employer to discriminate against an employee in violation of Section 8(a)(3) of the Act—that is, to cause discrimination to encourage membership in a labor organization—I find that the General Counsel has not proved a violation of the Act under Section 8(b)(2) of the Act. It appears to me that the General Counsel was regarding the alleged violation of Section 8(b)(1)(A) only as one deriving from a violation of Section 8(b)(2), in which case the alleged violation of Section 8(b)(1)(A) would fail with the failure to prove a violation of Section 8(b)(2).

However, even if he did not include the allegation of violation of Section 8(b)(1)(A) of the Act in the complaint as a derivative violation, I should nevertheless find no independent violation of that subsection. The General Counsel, it is true, amended the complaint to allege not only that the Respondent had caused Crume's discharge because Crume was not a member of Respondent but also because he "had not been cleared for employment in Alaska by Respondent." I do not understand that this amendment was made to permit proof of an independent violation of Section 8(b)(1)(A). But the fact that the discharge was caused by the Respondent's refusal "to clear" Crume, does not necessarily prove that the Respondent restrained or coerced Crume in the exercise of the rights guaranteed in Section 7 of the Act any more than it proves a violation of Section 8(b)(2) of the Act.<sup>6</sup> I find that the evidence here was insufficient to prove that it did.

#### CONCLUSIONS OF LAW

- 1 West Coast is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. West Coast and Berg are employers within the meaning of Section 2(2) of the Act.
3. The Respondent is a labor organization within the meaning of Section 2(5) of the Act.
4. The Respondent has not caused West Coast to discriminate against Crume in violation of Section 8(a)(3) of the Act and therefore has not engaged in action in violation of Section 8(b)(2) of the Act.
- 5 The Respondent has not restrained or coerced Crume in the exercise of the rights guaranteed in Section 7 of the Act within the meaning of Section 8(b)(1)(A) of the Act.

#### RECOMMENDED ORDER

Upon the basis of the foregoing findings and conclusions of law and upon the entire record in the case, I recommend that the complaint be dismissed in its entirety.

<sup>6</sup> *Millwrights and Machinery Erectors, etc., supra.*

Peninsula General Tire Company, Inc.,<sup>1</sup> Petitioner *and* Garage and Service Station Employees Union, Local No. 665, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America,<sup>2</sup> Union. *Case No. 20-RM-536. November 8, 1963*

#### 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 Hearing Officer Wesley J. Fastiff. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

<sup>1</sup> Hereinafter referred to as Peninsula or the Employer.

<sup>2</sup> Hereinafter referred to as the Union

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 organization involved claims to represent certain employees of the Employer.
3. The Employer seeks an election in a unit of its tire mounters and driver-salesmen. The Union moved that the petition be dismissed on the ground that it has never had any interest in representing the employees who are the subject of the petition and that, therefore, no question concerning representation exists.<sup>3</sup>

Peninsula's operation consists of the wholesale and retail sale and service of vehicular tires. A number of the Employer's competitors bargain directly with the Union through the California Tire Dealer's Association.<sup>4</sup> A collective-bargaining contract between the Association and the Union was due to be reopened on August 12, 1963. Early in June 1963, the Union's business agent, Breenfleck, was contacted by Polmgren, secretary of the Association, and told that the Association had unsuccessfully attempted to get a power of attorney from the Employer to represent it as part of the association group in collective-bargaining negotiations, and that other tire dealers in the area were complaining about Peninsula's allegedly substandard wages and hours. Polmgren asked Breenfleck if ". . . he could do anything about it." Breenfleck testified that, as a result of his conversation with Polmgren, the Union decided to engage in informational picketing of the Employer's premises.

The Union began to picket Peninsula on June 17, carrying signs containing either of the following legends:

UNFAIR, SUBSTANDARD WAGES.  
LOCAL 665, I.B. OF T.

UNFAIR HOURS AND CONDITIONS.  
LOCAL 665, I.B. OF T.<sup>5</sup>

<sup>3</sup> At the hearing, the Union moved to dismiss the petition because of, or to postpone the hearing until disposition of, certain unfair labor practice charges (Case No 20-CC-373) brought against the Union by the Employer. The Union contends that, to proceed herein would controvert the Board's well-established policy of not considering matters pertaining to unfair labor practices in representation proceedings. However, that policy does not preclude the Board from considering such matters where they are material in determining whether a question concerning representation exists, which is our sole concern in this case. (*Foothill Electric Corporation*, 120 NLRB 1350, 1353) The Union's position is therefore lacking in merit. Hence, we deny the motion.

<sup>4</sup> Hereinafter referred to as the Association.

<sup>5</sup> On July 11, 1963, pickets appeared at the Employer's premises with a sign reading:  
TO THE PUBLIC:  
THIS FIRM DOES NOT HAVE  
A UNION CONTRACT.  
I.B.T. UNION LOCAL 665.

According to union witnesses, this sign was used on July 11 because Union Agent Starling, who kept the other signs in his automobile when they were not in use, had not arrived to pass them out when the pickets went on duty that day.

On June 24, 1963, a conversation took place between Starling, business agent of the Union, and Williams, Employer's general manager and president, which is the subject of much conflicting testimony. It is undisputed that Starling initiated the conversation by asking, "When are we going to get together?" Starling also assigned as a reason for the picketing that someone had "blabbed" about the Employer's "low wages and long hours." Starling gave Williams a copy of the Union's contract with the Association on which he marked the word "Sample" and suggested that Williams call Breenfleck, Starling's superior, if Williams had any questions. Breenfleck later called Williams and asked if there were any changes or if Williams wanted to get together with him. He also asked if the matter were "status quo" and Williams responded that it was. Williams countered that Peninsula's wage rates, coupled with its fringe benefits, were "close" to the Union's contractual wage structure. On neither this nor any other occasion did Starling or any other union agent question the Employer as to the wages, hours, or working conditions at its operation.

The testimony in conflict consists of Williams' version that Starling expressly asked when they were going to get together *on a contract*, said that other employers had been instructed not to do business with Williams but would be informed as soon as Williams signed a contract with the Union, and wanted to know when the men were going to join the Union. Starling, however, denied any request for a contractual relationship. He testified that he expressly told Williams that he was not interested in organizing the employees but that the picketing had been initiated because of the "low wages and long hours." Williams testified that Starling told him that if Peninsula's employees did not want to join the Union he would provide him with some who would. Starling could not remember whether or not he made any such statement. The union contract, according to Starling, was given to Williams to show union scale and conditions and was marked as a sample contract so as to avoid the possibility of a misunderstanding that signature thereof was being requested.

On June 28, the Employer filed this petition. On July 10, the Union filed with the Board a disclaimer of interest in the employees covered by the Petition. This asserted disinterest was not communicated to any other interested party. The Union again disclaimed at the hearing.

On this record, we are persuaded that a purpose of the Union's picketing was to force the Employer to recognize and bargain with the Union as did the association members. Particularly indicative of this are the circumstances giving rise to the picketing and the Union's failure at any time, although its picketing is assertedly to protest substandard wages and working conditions, to inquire into the Employer's wages and working conditions. Even when Williams maintained that

Peninsula's wage structure, including benefits, bonuses, and incentives, was close to Union contracts' wages, Starling did not exhibit the slightest curiosity as to what disparities might or might not exist.

Our conclusion is that the Union has acted inconsistently with its disclaimers and that its picketing, now as when it began, is tantamount to a demand for recognition. Accordingly, we find that a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c) (1) and Section 2(6) and (7) of the Act.<sup>6</sup>

4. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within Section 9(b) of the Act:

All tire mounters and driver-salesmen employed at the Employer's Burlingame, California, place of business, excluding all mechanics, office clerical employees, professional employees, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

CHAIRMAN McCULLOCH and MEMBER BROWN took no part in the consideration of the above Decision and Direction of Election.

<sup>6</sup> Cf. *Miratti's, Inc.*, 132 NLRB 699.

**Market Basket and Food, Drug & Beverage Warehousemen & Clerical Employees, Local 595, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.** *Case No. 21-CA-5163. November 12, 1963*

### DECISION AND ORDER

On July 18, 1963, Trial Examiner E. Don Wilson issued his Intermediate Report herein, finding that the Respondent engaged in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Intermediate Report. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

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 Leedom, Fanning, and Brown].

The Board has reviewed the Trial Examiner's rulings 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 this case.