

McDonald's of Canoga Park Calif., Inc.¹ and Joint Council of the Brotherhood of Independent Workers, affiliated with the National Federation of Independent Unions, Petitioner.¹ Case 31-RC-163. December 23, 1966

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Ronald M. Telanoff of the National Labor Relations Board. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.²

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Sections 9(c) (1) and 2(6) and (7) of the Act, for the reasons indicated below.

The record indicates that the Petitioner is composed of dues-paying members who receive notice of membership meetings which are held once a month, vote on membership dues, and have, on at least one occasion, participated in the bargaining process. Members who are over 21 years of age are eligible to hold office in the organization if they have been a member thereof for a period of 4 years and have attended at least 50 percent of all regular meetings.³ Further, the record shows, and the Employer does not contend otherwise, that the Petitioner has been certified by the Board as a representative of employees in at least two consent-election cases and has collective-bargaining agreements with at least 10 employers.

Nevertheless, the Employer contends, among other things, that the Petitioner is, in effect, a labor consultant in the service of employers, and is not, therefore, a bona fide labor organization capable of dealing at arm's length with employers for the purposes of collective bargaining. In this respect, the record does indicate an extraordinary lack of candor in the testimony of the Petitioner's principal officers with respect to the affairs of the organization. Coy Jensen, president,

¹ The parties' names appear as amended at the hearing

² The Hearing Officer's ruling partially revoking the *subpoena duces tecum* issued at the request of the Employer is affirmed. We find that the information sought thereby is cumulative in nature and would not tend, in any event, to affect our Decision herein

³ As the first regular election under the Petitioner's bylaws will not be held until April 1969, members not then eligible to run for elective office must wait until 1973, when the next regularly scheduled election will take place.

and A. G. Junior Beck, vice president, were unable to agree on the method of compensation or on the amounts paid to the organization's officers and employees. They had no idea of the size of their membership. Beck testified that he did not know if he was elected by the general membership as required by the organization's bylaws. Joseph Hagler, recording secretary, who is employed elsewhere as a part-time business consultant and administrative assistant, testified that he heard his predecessor had resigned and he was elected for a term of 3 or 4 years: "I think it is 3 or 4 years. I don't know."

The record also shows that William Anderson, a member of the Petitioner's executive board, is an employee of Robert Anderson and Sons Company. This company has negotiated a collective-bargaining agreement with the Petitioner. The Anderson Company is owned by Robert Anderson, Sr., William's father. When asked why Robert Anderson, Sr., had signed the Petitioner's bylaws as a member of the "board of directors," Jensen denied that Anderson had any connection with the Petitioner and stated: "Well, everyone was signing the bylaws that was in the office, so he signed them also." Jensen also testified that Larry Bunch was a member of the Petitioner's executive board while employed by the Bunch Corporation and that shortly after he resigned from the board he became a "[construction] contractor" and signed a collective-bargaining agreement with the Petitioner on behalf of the Bunch Corporation.

As the Board has stated,⁴ collective bargaining is a two-way proposition; the employer must be present to protect his business interests, and the union "must be there with the single-minded purpose of protecting and advancing the interests of the employees who have selected it as their bargaining agent, and there must be no ulterior purpose." The facts summarized above are such as to create a substantial doubt as to whether the Petitioner does act or is competent to act as an employee bargaining representative in accordance with that standard.

The Petitioner, by reason of its conduct at the hearing, has precluded us from resolving that doubt. As stated above, the Petitioner's principal officers exhibited an extraordinary lack of candor with respect to the control and affairs of the organization; the Petitioner had opportunity at two hearings to present meaningful evidence on these matters, but failed to do so. Accordingly, we shall dismiss the petition.

[The Board dismissed the petition.]

⁴ *Bausch & Lomb Optical Company*, 108 NLRB 1555, 1559. See also *Oregon Teamsters' Security Plan Office*, 119 NLRB 207, 211, and *General Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 249*, 139 NLRB 605, 607