Teamsters Local Union No. 115 *and* J. Stanley Thackerah and J. Charles Barr t/a The Vila-Barr Company. *Case No. 4–CP–79. March 10, 1966*

DECISION AND ORDER

On August 9, 1965, Trial Examiner Sidney Sherman issued his Decision 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, as set forth in the attached Trial Examiner's Decision. Thereafter, the General Counsel filed exceptions to the Trial Examiner's Decision and a supporting brief, and the Respondent filed a brief in support of the Trial Examiner's Decision.

The National Labor Relations Board has considered the Trial Examiner's Decision, 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.

The facts were stipulated by the parties. At all relevant times, the Company had only one employee, a warehouseman, who signed a card for the Union in January 1965. When the Company refused to recognize the Respondent as bargaining representative of this employee, Respondent commenced picketing on February 24. The picketing continued until April 20, when it was enjoined by the United States District Court for the Eastern District of Pennsylvania on a petition filed by the Regional Director for Region 4 pursuant to Section 10(l) of the National Labor Relations Act, as amended. The parties stipulated that the picketing was for a recognitional object and that it disrupted deliveries to and from the Company.[1] Although the Respondent filed no representation petition during this period, relying on *Al & Dick's Steak House*, where the Board refused to direct an election under Section 8(b)(7)(C) in a one-man unit,[2] on March 11 it filed a charge alleging that the Company had violated Section 8(a)(5) by refusing to bargain with it. However, this charge was dismissed by the Regional Director on the ground that the one-man unit was inappropriate.[3]

[1] The General Counsel excepts to the Trial Examiner's finding that the content of the picket signs "appears to satisfy" the publicity proviso requirements of Section 8(b)(7)(C). However, since the Trial Examiner also found the proviso inapplicable because the Respondent admitted that the picketing had the effect of disrupting deliveries, we do not find it necessary to rule on this exception.

[2] *Al & Dick's Steak House, Inc.*, 129 NLRB 1207.

[3] The Board has long adhered to the view that it would not certify a union as representative of a one-man unit, *Luckenbach Steamship Company, Inc.*, 2 NLRB 181, 193; and would not find that an employer had unlawfully refused to bargain in such unit, *Foreign Car Center, Inc., etc.*, 129 NLRB 319.

We agree with the Trial Examiner, and essentially for the reasons stated by him, that the Respondent did not violate Section 8(b)(7)(C) by picketing for recognition for a period exceeding 30 days without filing a petition for an election. We shall therefore dismiss the complaint in its entirety.

The Board has recognized that the provisions of Section 8(b)(7)(C) were designed to shield employers and employees from the adverse effects of prolonged recognitional or organizational picketing and to provide a procedure whereby the representation issue that gave rise to the picketing could be resolved as quickly as possible. To achieve those objectives, Section 8(b)(7)(C) bars recognitional or organizational picketing for more than a reasonable period not to exceed 30 days unless a representation petition is filed prior to the expiration of that period. If a petition is filed, the Board directs an expedited election in which employees can freely indicate their desires as to representation. If the employees select the union as bargaining representative, it will be certified and by the terms of Section 8(b)(7) exonerated from its strictures. But if employees reject the union, it will be barred under Section 8(b)(7)(B) from picketing for recognition for a period of 12 months from the election.[4]

This statutory plan, designed to substitute Board elections for picketing of unreasonable duration as a means for resolving disputes over representation, is not applicable, however, where, as here, a one-man unit is involved. This is true because the Board has held that it is not empowered to certify a bargaining representative or by other procedures require bargaining in a unit comprising one employee and it therefore does not direct elections under Section 9(c) or 8(b)(7)(C) in such units.[5] In view of this construction of the Board's powers, a construction well established at the time Section 8(b)(7) was enacted, a union claiming recognition is disabled through no fault of its own from invoking the Board's election processes for purposes of resolving the question concerning representation raised by its picketing. In these circumstances, it would be inequitable, and be, we believe, not within the intention of Congress, to condition the lawfulness of the recognitional picketing in a one-man unit on the union's filing of a petition, since, if such petition were filed, it would be dismissed.[6] We therefore conclude, in agreement with the Trial Examiner, that in the circumstances of this case, the fact that the Union has picketed for

[4] *International Hod Carriers', etc., Local 840 (C. A. Blinne Construction Company)*, 135 NLRB 1153, 1156–1159.

[5] *Luckenbach Steamship Company, supra; Al & Dick's Steak House, Inc., supra.*

[6] The Board has held that "it is only a petition that leads to an expedited election which warrants dismissal of an otherwise meritorious charge" of a violation of Section 8(b)(7)(C). *Chicago Printing Pressmen's Union No. 3, etc. (Moore Laminating, Inc.)*, 137 NLRB 729.

recognition as collective-bargaining representative for a one-man unit for a period exceeding 30 days without filing a representation petition, does not make its picketing unlawful.

Our conclusion that picketing in circumstances such as these is not unlawful is reinforced by our decisions in *Blinne* and in *Charlton*.[7] In *Blinne*, the Board, although finding that the respondent union violated Section 8(b)(7)(C) where its 8(a)(2) and (5) charges were dismissed as without merit by the Regional Director, stated that if the 8(a)(5) charge had been found meritorious, there would have been no 8(b)(7)(C) violation.[8] The Board reasoned that since, under normal practice, the Board dismissed a representation petition where an 8(a)(5) charge is found meritorious, a representation petition is not required in an 8(b)(7)(C) context where a meritorious 8(a)(5) charge was filed. In *Charlton*, the Board held that picketing under Section 8(b)(7)(C) was lawful where the respondent union was precluded from filing a meritorious 8(a)(5) charge because the union had not complied with the then-existing provisions of Section 9(f), (g), and (h). We agree with the Trial Examiner's reasoning that where the one employee in the unit has signed an authorization card and the Respondent was prevented from filing a meritorious 8(a)(5) charge for reasons beyond its control—the fact that a one-man unit was involved—the conclusion is even more compelling than in *Charlton* that the lawfulness of the picketing should not be conditioned on the filing of a petition or a blocking 8(a)(5) charge.

R. S. Noonan, Inc.,[9] relied on by the General Counsel to establish the unlawfulness of the picketing, is plainly distinguishable. In *Noonan*, the union had picketed for more than 30 days to compel the employer to sign a collective-bargaining contract covering operating engineers even though the employer had not hired operating engineers for several years and was not planning to hire any in the foreseeable future. The Board found that the picketing violated Section 8(b)(7)(C) although a representation petition would not have been entertained because there were no employees in the unit. The Board pointed out that to permit a union to picket indefinitely to force an employer to sign such a contract would be contrary to the purpose of Section 8(b)(7)(C) of the Act, since the legislative history makes it clear that a union cannot use coercive techniques, such as picketing, to force an employer to sign such an agreement. Here, however, we are not dealing with a prehire agreement, nor even with a situation where no election may be held because of an expanding unit, but rather with a

[7] *International Hod Carriers', etc., Local 840, supra; International Typographical Union, et al. (Charlton Press, Inc.)*, 135 NLRB 1178.

[8] 135 NLRB 1153, 1166, footnote 24.

[9] *Local 542, International Union of Operating Engineers, AFL–CIO* (R. S. Noonan, Inc.), 142 NLRB 1132, enfd. 331 F. 2d 99 (C.A. 3), cert. denied 379 U.S. 889

stable one-man unit. There is no statutory or other policy against representation of an individual employee in a stable one-man unit by an authorized representative, or the signing of a bargaining contract for such an individual by the representative.[10] Hence, to bar picketing after 30 days despite the fact that the Board would not entertain a representation petition for a one-man unit would not serve any statutory purpose, but rather would effectively prevent employees in such units from exercising their Section 7 rights by the only means available to them.

In view of the foregoing and on the entire record in this case, including the facts that the Employer has refused to recognize the Respondent at a time when it represented the Employer's only employee, and that the Board's election and unfair labor practice procedures are unavailable to the Respondent, we find that the Union's picketing did not violate Section 8(b)(7)(C).[11]

[The Board adopted the Trial Examiner's Recommended Order dismissing the complaint.]

[10] *Louis Rosenberg, Inc.*, 122 NLRB 1450, 1453

[11] In reaching this conclusion, we do not rely on the Trial Examiner's reasoning that Section 8(b)(7) does not apply to one-man units because the statute refers to "employees" and to "collective bargaining."

TRIAL EXAMINER'S DECISION

The original charge herein was served on Respondent on February 19, 1965,[1] the complaint issued on April 9, and on April 28 and 29 all parties executed a stipulation, which contained a waiver of any hearing or oral argument before a Trial Examiner, an agreement that the stipulation and pleadings in the case shall constitute the entire record, and an agreement as to the relevant facts. Thereafter briefs were filed by the General Counsel and Respondent. Subsequently, on July 29, 1965, the parties filed a supplemental stipulation regarding certain matters not covered in the original stipulation. The only issue litigated was whether Respondent violated Section 8(b)(7)(C) of the Act by picketing for recognition in a one-man unit without filing a petition for an election.

Upon the entire record in the case, Trial Examiner Sidney Sherman adopts the following findings and conclusions:

I. THE BUSINESS OF THE COMPANY

The complaint alleges, the answer admits, and I find that the partnership named in the case caption, hereinafter called the Company, has its principal office in Philadelphia, Pennsylvania, where it maintains two warehouses; that it is there engaged in the distribution of salt and dyestuffs; and that during the past year the Company received more than $50,000 worth of goods from out-of-State points and shipped more than $50,000 worth of goods to out-of-State customers. The Company is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Teamsters Local Union No. 115, hereinafter called Respondent, is a labor organization under the Act

III. THE ALLEGED UNFAIR LABOR PRACTICES

The complaint alleges, and the answer denies, that Respondent violated Section 8(b)(7)(C) of the Act by picketing for recognition or by picketing with an object of

[1] All events hereinafter related occurred in 1965.

forcing the Company's employees to accept Respondent as their collective-bargaining representative.

A. *The facts*

The facts stipulated by the parties are as follows:

At all times here material, the Company has had only one employee, a warehouseman, who, in January, signed a card authorizing Respondent to represent him.[2] On February 4 that card was shown by Respondent to the Company, in support of a request for recognition, and on February 15 Respondent renewed its request, announcing that it would picket if not recognized. The foregoing requests were rejected by the Company, and from February 24 to April 21 [3] Respondent picketed the Company's premises. The picketing has had the effect of inducing some individuals employed by employers other than the Company not to pick up, deliver, or transport goods or perform services. An object of the picketing is to compel the Company to recognize or bargain with Respondent as the collective-bargaining representative of the Company's employee. Respondent has filed no petition for an election under Section 9 of the Act "in reliance on" the Board's decision in *Al & Dick's Steak House, Inc.*, 129 NLRB 1207. On March 11, Respondent filed a charge with the Board alleging that the Company had violated Section 8(a)(5) of the Act by refusing to bargain with Respondent [4] On March 30 this charge was dismissed by the Regional Director on the ground that the unit was inappropriate because it comprised only one employee.[5]

B. *Discussion*

Section 8(b)(7) of the Act provides that it shall be an unfair labor practice for a union or its agents—

> to picket . . . any employer where an object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective bargaining representative, unless such labor organization is currently certified as the representative of such employees:
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> (C) where such picketing has been conducted without a petition under section 9(c) being filed within a reasonable period of time not to exceed thirty days from the commencement of such picketing: *Provided,* That when such a petition has been filed the Board shall forthwith, without regard to the provisions of section 9(c)(1) or the absence of a showing of a substantial interest on the part of the labor organization, direct an election in such unit as the Board finds to be appropriate and shall certify the results thereof: *Provided further,* That nothing in this subparagraph (C) shall be construed to prohibit any picketing or other publicity for the purpose of truthfully advising the public (including consumers) that an employer does not employ members of, or have a contract with, a labor organization, unless an effect of such picketing is to induce any individual employed by any other person in the course of his employment, not to pick up, deliver or transport any goods or not to perform any services.

It is admitted that Respondent has picketed for more than 30 days without filing a petition for an election and that an object of such picketing is to compel the Company to recognize or bargain with Respondent as the representative of the Company's warehouseman. It follows that Respondent has violated Section 8(b)(7)(C) unless its picketing is immunized by the "publicity" proviso, quoted above, or unless, as Respondent contends, Section 8(b)(7)(C) does not apply to picketing for recognition in a one-man unit.

As to the publicity proviso, while the parties' supplemental stipulation shows that throughout the period of the picketing Respondent displayed signs stating that the picketing was "for recognition [of Respondent] as collective bargaining agent," and, in addition (after March 11), displayed signs characterizing the picketing as in pro-

[2] As of the date of the submission of this case (April 28), the card had not been revoked.

[3] On that date the picketing was enjoined.

[4] Case No. 4–CA–3592.

[5] See *Foreign Car Center, Inc., etc.*, 129 NLRB 319.

test of the Company's "unfair labor practices in refusing to recognize Union," Respondent acknowledges that the picketing was "for the purpose of stopping deliveries to, and shipments from Vila-Barr and, in fact, disrupted deliveries to, and shipments from Vila-Barr to a substantial degree."

Although the content of the picket signs appears to satisfy the requirements of the publicity proviso, it is found that the proviso is inapplicable because (1) the foregoing admission as to "the purpose" of the picketing precludes any finding of an informational purpose,[6] and (2) in any event, the admittedly disruptive effect thereof on the Company's operations removes the picketing from the protection of the proviso.[7]

It accordingly becomes necessary to consider Respondent's contention that Section 8(b)(7)(C) does not apply at all because of the limited size of the unit. I find merit in this contention for the reasons next set forth.

Central to Respondent's position is the circumstance that, under existing precedents, the Board will not direct an election to determine Respondent's majority status in the one-man unit here involved, nor will the Board issue an order requiring bargaining with respect to such unit. These precedents stem from the Board's Decision in *Luckenbach Steamship Company Inc.*,[8] where, in dismissing a petition for a unit comprising only one employee, the Board said:

> The National Labor Relations Act creates the duty of employers to bargain collectively. But the principle of collective bargaining presupposes that there is more than one eligible person who desires to bargain. The Act therefore does not empower the Board to certify where only one employee is involved.

And this rule was applied in *Al & Dick's Steak House, Inc., supra,* to a petition for an expedited election filed by a union involved, as is Respondent, in a pending proceeding under Section 8(b)(7)(C) of the Act. In dismissing the petition in that case, the Board stated:

> In cases arising under Section 9(c)(1) the Board has long held that it is without power to certify a labor organization as the representative of but one employee and has followed the policy of not directing elections in one-man units. We see no reason to modify this policy when we have before us a petition for an expedited election under Section 8(b)(7)(C) and 9(c).

Absent any indication to the contrary, it must be assumed for the purpose of this case that the Board still adheres to the foregoing position, and that, if Respondent had filed a timely petition for an election, it would have been dismissed by the Regional Director and such dismissal would have been affirmed by the Board on appeal. Moreover, it is not disputed that the mere filing of a timely, but defective, petition by Respondent would not have been deemed by the Board to satisfy the requirements of Section 8(b)(7)(C). Although under a literal reading of that subsection the mere filing of a timely petition would seem to afford a complete defense to a charge under Section 8(b)(7)(C), the Board has refused to give such effect to a petition unless it actually results in the direction of an election. This position of the Board is reflected in its Rules and Regulations, the net effect of which is that, while a charge under Section 8(b)(7)(C) will be held in abeyance by the Board pending the processing of a timely petition for an election, the charge will be dismissed only if an election is finally directed. If, however, it is determined not to direct an election and the petition is dismissed, the Board's Rules require that the processing of the charge be resumed.[9]

In the face of the foregoing considerations, Respondent was amply justified in believing that, even if a timely petition for a one-man unit had been filed by it, such petition would have been dismissed and such filing would not, in itself, have afforded any

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[6] See *Jack Picoult, et al., d/b/a Jack Picoult (Local 3, International Brotherhood of Electrical Workers, AFL–CIO)*, 137 NLRB 1401, 144 NLRB 5, enfd. 339 F. 2d 600 (C.A. 2).

[7] See *Barker Bros. Corp., et al. (Retail Clerks Union Local 324, et al.)*, 138 NLRB 478, 486–492.

[8] 2 NLRB 181, 193.

[9] See Board's Rules and Regulations, Series 8, as amended, Sections 102.73 to 102.82. *Chicago Printing Pressmen's Union No. 3, etc. (Moore Laminating, Inc.)*, 137 NLRB 729, 733. Note, above, that in *Al & Dick's Steak House, supra,* the Board expressly stated that, in view of the dismissal of the petition in that case for a one-man unit, the petition could not "serve to block the further processing of the charges of 8(b)(7) violation." (The Board there, however, expressly reserved the question here presented; namely, whether the picketing in that case violated 8(b)(7)(C).)

defense to its alleged violation of Section 8(b)(7)(C). The issue is thus posed whether the Board will excuse Respondent's failure to file a petition because of the apparent futility of such an act. The Board has construed Section 8(b)(7)(C) as not conditioning the right of a union to picket upon the filing of a timely petition for an election, where, for procedural reasons, such petition, if filed, would have been dismissed by the Board.[10]

It would seem but a logical corollary of the foregoing rule to hold that an election petition need not be filed by a union under Section 8(b)(7)(C) in a case where, as here, Board policy requires dismissal of the petition due to circumstances beyond the union's control.[11] For this reason alone, I would recommend dismissal of the complaint.

There is, however, an even more cogent reason for such dismissal. By its terms Section 8(b)(7) applies only where a union pickets, or threatens to picket, an employer with an object of forcing him to recognize or bargain with the union "as the representative of his *employees*." Here, it is stipulated that an object of Respondent is to force the employer to recognize or bargain with Respondent as the representative of but a *single employee*

In view of the Board's settled construction (since 1936) of collective bargaining, as bargaining for employees, and not for one-man units, a construction of which Congress was presumably aware, it cannot be assumed that the use of the plural form here was inadvertent. It seems more reasonable to infer that such use was deliberate, reflecting recognition of the Board's view that one-man units fell outside the scope of the collective-bargaining requirements of the Act, as defined in Sections 9 and 8(a)(5).[12]

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[10] *International Typographical Union, et al. (Charlton Press, Inc.)*, 135 NLRB 1178; *International Hod Carriers', etc., Local 840 (C. A. Blinne Construction Company)*, 135 NLRB 1153. In those cases the Board considered whether it would require a union to file a timely petition under Section 8(b)(7)(C), even though there was pending a meritorious refusal-to-bargain charge against the employer involved. The Board stated in those cases that, under such circumstances, a petition need not be filed, since, under Board policy, such a charge would require dismissal of the petition. In *Charlton*, the Board took the further position that a petition need not be filed, even absent a refusal-to-bargain charge, where such a charge, if filed, would have been meritorious but the respondent union was precluded from filing such charge by the then provisions of Section 9(f), (g), and (h) of the Act.

[11] It is clear here that the obstacle to the processing of an election petition—the size of the unit—is beyond the control of Respondent. In *Blinne*, the situation considered by the Board was one where the obstacle was a refusal-to-bargain charge filed by the union involved which, while not beyond its control, was necessary to vindicate its statutory rights. It would seem that where, as here, the obstacle to processing of the petition is entirely beyond the union's control, the equitable considerations which swayed the Board in *Blinne* would apply with even more force.

Moreover, when one considers the extent to which the Board in *Charlton Press, supra,* accommodated the provisions of Section 8(b)(7)(C) to the equities of the situation, it is difficult to believe that the Board would here ignore the Respondent's plight. There, as already noted, the Board excused the respondent's failure to file both a timely petition for an election and a refusal-to-bargain charge. The Board reasoned that, absent its statutory disability, the respondent might have filed a meritorious refusal-to-bargain charge which would have blocked the processing of such petition. Here, Respondent is prevented by the statute as construed by the Board from effectively filing the election petition, itself, and not merely, as in *Charlton,* from filing a charge, which would render the petition ineffective. Moreover, here, unlike *Charlton,* there is no need to speculate that Respondent might have filed a meritorious charge but for its statutory disability, for Respondent did in fact file such a charge, which was dismissed by the Regional Director because of such disability. The fact that the disability in *Charlton* arose from the failure of the respondent's officers to disclaim Communist affiliation, whereas here the disability stems from the size of the unit, would seem insufficient reason for according more favorable treatment to the union in *Charlton* than to Respondent. Indeed, if anything, Respondent would seem to have the better case, as its disability can in no way be attributed to its acts or those of its officers.

[12] See, also, the discussion, below, of the legislative history of Section 8(b)(7), indicating that Congress intended the coverage of that provision to coincide with that of Section 9.

The General Counsel, however, cites the Board's decision in *Local 542, International Union of Operating Engineers, AFL–CIO (R. S. Noonan, Inc.)*,[13] where it was held that picketing for recognition in advance of the hiring of any employees by the picketed employer violated Section 8(b)(7)(C). The respondent there contends that Section 8(b)(7)(C) did not apply because there were no present employees involved. In rejecting this contention, the Board stated, *inter alia,* that the phrase "his employees" as used in Section 8(b)(7)(C) applied to "future or prospective employees as well as those currently employed." So, it might be argued that, if Section 8(b)(7)(C) applies where there are no present employees at all, it should apply *a fortiori* where there is only one such employee, or, in other words, if the prospect of future hirings can overcome the fact that there are no employees, there is no reason why it cannot overcome the fact that there is only one employee. However, this argument proves too much. If the Board, for purposes of Section 8(b)(7)(C), is to regard a demand for recognition in a one-man unit as a demand for recognition on behalf of such other employees as may be hired in the future, it would seem to follow that the Board, for purposes of Section 9(c), should also regard such a demand as a request for *collective* bargaining and entertain a petition for an election in such unit. If future employees are to be counted for one purpose, why not for the other? Or is the Board to test the validity of a petition under Section 9(c) by the present situation while testing the validity of an 8(b)(7)(C) charge by speculation as to the future?

The result urged by the General Counsel is even more anomalous when applied to the alternative allegation of the complaint that Respondent violated Section 8(b)(7)(C) by picketing to force the Company's employees to accept or select Respondent as their collective-bargaining representative. Here, the relevant statutory definition of the proscribed object is "forcing or requiring the employees of an employer to accept or select such labor organization as their *collective* bargaining representative." [Emphasis supplied.] Thus, the General Counsel has to cope not only with the fact that the statute here, too, uses the plural form of "employee," but also with the even more formidable circumstances that it uses the very phrase ("collective bargaining") which the Board regarded in *Luckenbach Steamship, supra,* as meaning only bargaining for two or more present employees and as precluding elections in one-man units; and the General Counsel is forced to explain how "collective bargaining," as used in Section 8(b)(7), can encompass bargaining for one man, notwithstanding the Board's holding to the contrary under Section 9(c).

The incongruity of the General Counsel's position is underscored by the fact that this very Respondent was denied relief under Section 8(a)(5) of the Act on the ground, presumably, that its request that the Company bargain with respect to the single warehouseman, represented by it, did not constitute a demand for *collective* bargaining. Yet, the General Counsel here seeks to proscribe Respondent's resort to self-help on the ground, *inter alia,* that it is thereby seeking to act as *collective*-bargaining agent for the same warehouseman. It is difficult to understand how collective bargaining can mean one thing when a union attempts to invoke the protection of the Act and quite a different thing when it resorts to self-help.[14]

In sum, in view of the basic conflict between the foregoing portion of the rationale of *Noonan* and the rule of the *Luckenbach* case, a conflict which is perhaps more apparent here than it was in *Noonan,* I am unwilling to assume that, in determining whether Respondent's request for bargaining was on behalf of one employee or more than one employee, the Board will take into account here, as it did in *Noonan,* the possibility of future hires,[15] or that it will construe Section 8(b)(7) as applying to picketing involving one-man units, notwithstanding the specific references therein to "employees" and "collective bargaining."

[13] 142 NLRB 1132, enfd. 331 F 2d 99 (C.A. 3).

[14] Since the only employee here involved signed a card for Respondent some weeks before the picketing began, there would not seem to be any factual basis, in any event, for the alternative allegation of organizational picketing.

[15] *Noonan* may be distinguished in any event on the ground that there was evidence there which pointed to the likelihood that, if he recognized the union, the employer would be required to hire a number of employees. There is no evidence here as to any likelihood of future hires. Moreover, *Noonan* also stressed the incompatibility of the Respondent's picketing for a prehire contract with congressional policy, as reflected in the legislative history of Section 8(f) of the Act.

Accordingly, if one looks only at the text of the Act, there seems to be ample basis for holding that Section 8(b)(7) does not apply here.

Furthermore, if resort to the legislative history of Section 8(b)(7) be deemed appropriate, such history is persuasive that, in conditioning picketing for recognition on the filing of an election petition, Congress intended such condition to apply only where the union had access to the Board's election machinery. Thus, the then-Senator Kennedy, in submitting to the Senate for the first time the text of the present language of Section 8(b)(7)(C), offered the following explanation of that provision: [16]

> A union may use pickets in an effort to organize until there is an election in which the NLRB can determine the employees' wishes. But a union which is stopping truck deliveries or other employees would not be allowed to avoid an election.[17]

The sense of this statement is that Section 8(b)(7)(C), in its present form, was designed to assure unions of the opportunity to picket up to the date of a Board election, and that this opportunity would be foreshortened only in the case of a union which was "avoiding" an election—that is, deliberately refusing to participate in an election. Necessarily inherent in the foregoing assessment of the purpose of Section 8(b)(7)(C) is the assumption that all unions affected by Section 8(b)(7)(C) will have access to the Board's election machinery under Section 9 of the Act, and so will be eligible to picket until an election is held.

It is of some significance, moreover, that in the only instance when it did advert to a situation where the facts conflicted with the foregoing assumption of parallel coverage of Section 8(b)(7)(C) and Section 9, Congress took action to establish such parallel coverage. Reference is here had to the provisions of Section 8(b)(7)(C) relating to the Board's showing-of-interest requirement. Before the enactment of Section 8(b)(7)(C), it was the Board's uniform policy not to entertain a union's petition for an election unless it was supported by proof in the form of signed authorization cards that at least 30 percent of the employees in the bargaining unit desired the union to represent them. Accordingly, to require a union which lacked such proof to cease picketing for recognition unless it filed a timely petition for an election would have meant in effect that it would have to discontinue such picketing as soon as the statutory "reasonable period" had expired. The bill, as passed by the House, proposed to deal with this problem by simply outlawing all recognition picketing by such a union.[18] However, the conferees rejected such a drastic solution and, instead, inserted in the bill the present provision directing the Board, in processing petitions filed in the context of a proceeding under Section 8(b)(7)(C), to dispense with the requirement of a showing of "substantial interest." The conferees thereby demonstrated their concern to avoid a disparity between the coverage of Section 8(b)(7)(C) and Section 9.

Accordingly, a construction of Section 8(b)(7)(C) as inapplicable to a union which, like Respondent, is picketing for recognition in a one-man unit accords not only with the literal language of the Act, but also with the concern of Congress that the coverage of Section 8(b)(7)(C) be coextensive with that of Section 9, as well as with the Board's own interpretation of Section 8(b)(7)(C), as reflected in *Blinne, supra,* and *Charlton Press, supra.*

For all the foregoing reasons, I find that Respondent did not violate Section 8(b)(7)(C) of the Act.

RECOMMENDED ORDER

It is ordered that the complaint herein be, and it hereby is, dismissed.

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[16] He was then a member of the conference committee, and was reporting to the Senate on certain points of disagreement between the House and Senate conferees, and seeking instructions from the Senate regarding the further action to be taken by its conferees. In this connection, he proposed a resolution requiring the Senate conferees to insist on the incorporation in the bill of the present language of Section 8(b)(7)(C), and it was in that context that he offered the explanation of that language next quoted in the text. See II Leg. Hist. 1377–1383.

[17] *Id* at 1377.

[18] The House-passed bill prohibited all picketing for recognition (or organization) by a union which was unable to "demonstrate that it has a sufficient showing of interest on the part of the employees to support a petition for an election under Section 9(c)." I Leg Hist. 684.