

**John's Valley Foods, Employer-Petitioner and Retail Store Employees Union, Local No. 428, AFL-CIO.**  
Case 32-RM-28 (formerly 20-RM-2147)

August 11, 1978

DECISION ON REVIEW

BY MEMBERS JENKINS, MURPHY, AND TRUESDALE

The Regional Director for Region 32 issued a Decision and Direction of Election on March 22, 1978, in the above-entitled proceeding in which he directed an election among a unit of the Employer's full-time and part-time employees at its Portola Valley, California, retail grocery store. In directing the election, the Regional Director concluded that the Union's current picketing of the Employer's store in the context of the background evidence manifests a present demand for recognition and therefore raises a question concerning representation. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, the Union filed a timely request for review of the Regional Director's Decision in which it contends, *inter alia*, that it does not seek to represent the Employer's employees and that its picketing is informational and does not evidence a present recognition objective. The Employer filed an opposition to the Union's request for review.

By telegraphic order dated April 19, 1978, the National Labor Relations Board granted the request for review and stayed the election directed herein.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this case, including a brief on review filed by the Union with respect to the issues under review, and makes the following findings:

The evidence reveals that agents of the Union contacted John Meany, the sole proprietor of the Employer, on several occasions in May 1977, prior to the opening of the store, and requested that he enter into a contract with the Union. Each time, Meany refused the Union's request. When the Employer's store opened for business on June 15, 1977, the Union commenced picketing. The Employer immediately filed an election petition in Case 20-RM-2147. An election was scheduled for July 6, 1977, but several days prior to that date the Union ceased picketing and filed a disclaimer of interest. The Employer's petition was consequently dismissed on July 22, 1977, and the election was canceled. The Regional Direc-

tor, in dismissing the petition, noted that he would entertain a motion to reinstate the petition should the Employer be presented with a recognition claim within 6 months of the dismissal.

On or about August 8, the Union resumed picketing of the Employer's store using placards containing area standards language. However, according to Meany, Louis Menacho, the Union's vice president, told him that the picketing would continue until a contract was consummated.<sup>1</sup> The picketing continued and on October 21, 1977, the Employer filed a charge alleging that the Union's picketing violated Section 8(b)(7)(C) of the Act. The Regional Director issued a complaint based on the charge and on December 16, 1977, the United States District Court for the Northern District of California enjoined the Union's picketing. The court's order was subsequently modified on January 6, 1978, to permit protected informational picketing.

On January 16, 1978, several days prior to the termination of the 6-month period imposed by the Regional Director, the Employer filed a motion to reinstate its election petition. The motion was granted on January 18 and in late January, presumably after the petition was reinstated, the Union once again resumed picketing and concurrently distributed leaflets to consumers specifically disclaiming any recognition objective.<sup>2</sup> The Union's placards and leaflets displayed verbatim language suggested by the district court and contained in its modified order. Since the issuance of the December 16 injunction (and its subsequent modification) the Union's conduct has conformed with the court's decree and since that date there has been no communication between Employer and the Union concerning the Union's post-injunctive picketing.<sup>3</sup>

The Regional Director acknowledges that there is no evidence the Union's conduct subsequent to the injunction has been inconsistent with either the court's order or its leaflet disclaimer, and that all picketing since the issuance of the court's injunction has conformed to the second proviso of Section 8(b)(7)(C). Nonetheless, the Regional Director concluded that the Union's earlier object of immediate

<sup>1</sup> The Union asserts its objective was never immediate recognition and that its initial picketing was intended to publicize the Employer's allegedly substandard wages.

<sup>2</sup> During this period this matter was transferred from Region 20, where the petition was filed, to Region 32. With respect to the unfair labor practice complaint issued by the Regional Director, it is noted that he subsequently proposed a settlement which was accepted by the Union, but not the Employer. The matter was referred to the Office of the General Counsel, and we have been advised the General Counsel has approved the proposed unilateral settlement agreement, that no appeal has been filed, and that the Union is currently in compliance with the agreement.

<sup>3</sup> Testimony reveals the final communication between the Union and the Employer may have occurred on October 28, 1977.

recognition has not been abandoned. Noting that the Union had ignored an earlier disclaimer, the Regional Director attached little weight to the Union's leaflet disclaimer. He further determined that the cessation of picketing for approximately 1 month following the December 16 injunction did not eradicate the Union's earlier immediate recognitional objective. We disagree with the conclusions of the Regional Director.

Although there is evidence of alleged unlawful preinjunctive conduct and such evidence undoubtedly was the basis for both the Regional Director's issuance of a complaint and the district court injunction, it is equally certain that since the issuance of the injunction the Union's picketing has been lawful and in strict compliance with the court's order and modification. We believe the Regional Director, in arriving at his decision, relied excessively upon the Union's pre-injunctive conduct and failed to accord sufficient weight to the Union's privileged post-injunctive activity.

Classic informational picketing may, of course, be also ultimately recognitional. But such activity, without more, does not evince a present demand for recognition and if that is all there is, an employer's election petition must be dismissed.<sup>4</sup> But informational picketing, in conjunction with *other* evidence of a proscriptive nature, can establish a present recognitional objective.<sup>5</sup> Such evidence, however, must be

<sup>4</sup> *Martino's Complete Home Furnishings*, 145 NLRB 604 (1963).

carefully evaluated because if it precedes a disavowal of representational interest, it is accorded less weight than if it accompanies or postdates a disclaimer.<sup>6</sup>

We believe the Regional Director, although properly taking into consideration the complete history of this proceeding, improperly relied on an unsupported presumption that the recognitional object continued and failed to consider sufficiently the substantial hiatus which followed the injunctive order, as well as the avowed object of the Union's current picketing, and the absence of contradictory or equivocal conduct evincing a present demand for recognition following the court's order.<sup>7</sup>

Accordingly, we find that there is an insufficient basis to conclude that a present recognitional object exists which would warrant the direction of an election. While we shall continue to evaluate the total conduct of a union in such situations, notwithstanding disclaimers of representative interest, we shall also protect the statutory right of labor organizations to engage in lawful picketing. Accordingly, because we find that no question concerning representation currently exists, the Regional Director's decision is vacated and the petition is dismissed.

<sup>5</sup> *Id.*; *Raymond F. Schweitzer, Inc. v. Old Angus Restaurant*, 165 NLRB 675 (1967).

<sup>6</sup> *International Brotherhood of Electrical Workers, AFL-CIO-CLC, and its Local Union No. 58 (Steinmetz Electrical Contractors Association, Inc.)*, 234 NLRB 633 (1978); *Gazette Printing Company*, 175 NLRB 1103 (1969).

<sup>7</sup> *Building and Construction Trades Council of Philadelphia and Vicinity, AFL-CIO (Altemose Construction Co.)*, 222 NLRB 1276, 1280 (1976); *United Brotherhood of Carpenters and Joiners of America, Local No. 1245, AFL-CIO (New Mexico Properties)*, 229 NLRB 236 (1977).