Ventura County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO *and* Compositor Construction. Case 31-CP-277

June 13, 1979

DECISION AND ORDER

BY MEMBERS JENKINS, MURPHY, AND TRUESDALE

On March 7, 1979, Administrative Law Judge Richard J. Boyce issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and Respondent filed a brief in opposition to the exceptions.

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 record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions[1] of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

[1] In agreement with the Administrative Law Judge, we find that the conversation which took place in late August 1978 between James Kelley, the Union's business representative, and Charles Renfro, a contractor with a worksite next to the Employer, does not establish that the September-October picketing by the Union at Compositor's worksites had a recognitional object. These remarks were ambiguous as to object and in any case made for their impact on Renfro not Compositor. Similarly, the late August remarks of Kelly to Jim McGraw, a contractor who had hired Compositor to do the framing work at McGraw's jobsite—not discussed by the Administrative Law Judge—do not support the General Counsel's case. Upon being told by McGraw that Compositor was the framing contractor at his jobsite, Kelley responded, "You know he's not one of us," and went on to say, "This could cost you more money than you think." We do not construe these comments as indicating a recognitional objective or imparting such an object to the Union's subsequent picketing of Compositor which subsequently took place.

DECISION

STATEMENT OF THE CASE

RICHARD J. BOYCE, Administrative Law Judge: This matter was heard before me in Ventura, California, on January 18, 1979. The charge was filed on September 15, 1978, by Compositor Construction (Company). The complaint issued on October 31, was amended during the trial, and alleges that Ventura County District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Respondent) has violated Section 8(b)(7)(C) of the National Labor Relations Act (Act).

I. JURISDICTION

The Company is a proprietorship owned and managed by Paul Compositor engaged as a framing subcontractor in the construction industry. It annually sells goods and services of a value exceeding $50,000 to firms in California who satisfy the Board's direct inflow and/or outflow jurisdictional standards.

The Company is an employer engaged in and affecting commerce within Section 2(2), (6), and (7) and Section 8(b)(7) of the Act.

II. LABOR ORGANIZATION

Respondent is a labor organization within Section 2(5) of the Act.

III. ISSUE

The complaint alleges that Respondent picketed the Company beginning on June 5, 1978, to force it to recognize Respondent as the collective-bargaining representative of its employees and to force its employees to select Respondent as their representative, in circumstances eventually causing a violation of Section 8(b)(7)(C).

The answer denies any wrongdoing.

IV. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Facts*

Respondent has not been the certified bargaining representative of the Company's employees at any relevant time.

On May 31, 1978, Respondent sent a wire to the Company's owner, Paul Compositor, asking to be supplied with "information regarding the wages and fringe benefits you are paying your employees" for work on a Main Street project in Ventura. Upon receiving the wire, Compositor invited a business representative for Respondent, James Kelley, to his home to discuss the matter. Kelley agreed to do so, "as a friend."[1]

During the resulting conversation, on the evening of the 31st, Compositor asked what the wire was about. Kelley replied that Compositor's carpenters were not being paid in conformity with Respondent's area standards. To Compositor's query how Kelley knew this, Kelley gave no direct answer, instead detailing the wage and fringe-benefit requirements under the standard union contract and reciting various ways Respondent might induce Compositor to sign—by picketing, by pressuring prime contractors to oust him from jobs, by causing his lumber shipments to be delayed.[2]

[1] Compositor had once worked under Kelley for a construction firm, and they regard each other as friends.

[2] This is Compositor's credited version of the conversation. Kelley admittedly could not recall it clearly—"it was quite a while ago." Kelley did recall that the matter of Compositor's signing a contract came up, but assertedly could not remember whether he or Compositor broached the subject. Compositor's recital was the more detailed and convincing of the two.

The following afternoon, Kelley called on Compositor at his home again, this time uninvited. Kelley informed Compositor that, if he would sign a union contract, Respondent would consent to his finishing his present jobs on a nonunion basis; and that it would withhold picketing for a few days to give him time to decice. Kelley added that Respondent would get Compositor to sign, "one way or another," and repeated his previous day's recital of the techniques it might use.[3]

Compositor did not sign. On June 5, without further word, Respondent began picketing the Main Street project, continuing to do so until June 30. And on June 19, still without further word, it began picketing a project on which the Company was working on Poli Street in Ventura. This lasted until July 18. The picket signs in both instances stated:

Compositor Failure to Comply with Area Standards

On June 28, ostensibly to activate the Board's "expedited election" machinery under the first proviso to Section 8(b)(7)(C), the Company filed a charge alleging the picketing to be in violation of that section,[4] together with a petition for election.[5] On July 12, the Regional Director issued a letter informing the parties:

> It does not appear that further proceedings on the charge are warranted inasmuch as a timely valid representation petition . . . has been filed . . . and a determination has been made that an expedited election should be conducted . . . .

The letter contained instructions for appealing the Regional Director's determination, giving July 18 as the appeal deadline. Affixed by stamp to the bottom of the letter in evidence, which apparently was taken from NLRB files, is this statement: "Appeal period expired 7-18-78. Case closed."

An election did not ensue, however. On July 18, coincident with the cessation of picketing on the Poli Street project, Respondent gave the Regional Director written notice that it disclaimed any interest in representing the Company's employees and would take no action inconsistent with that representation. The Regional Director thereupon issued an order dated July 19, stating:

> Inasmuch as [Respondent] has filed a Disclaimer of Interest . . . and is not engaged in any activity inconsistent with its Disclaimer of Interest, it is hereby ordered that the petition for representation be . . . dismissed . . . . Any petition filed by [Respondent] within six months from this date will not be entertained unless good cause is shown to the contrary. Moreover, in the event [Respondent] makes a claim for recognition upon the Employer within six months from this date, a motion by the [Employer] requesting reinstatement of this petition will be entertained.

On about August 16 a former foreman for the Company gave Kelley some check stubs and copies of pages from the Company's payroll journal relating to the Main Street and Poli Street projects. The journal entries indicated that the Company's carpenters were receiving between $5.25 and $11.50 per hour, and gave no indication of fringe benefits. Union scale at the time was $10.77 per hour in wages, plus $4.70 per hour in fringe benefits, with foremen receiving a $1-per-hour wage premium. Thus fortified, Respondent sent this wire to the Company on August 29:

> This is to advise you that we have specific information that proves that your company is not paying its carpenter employees prevailing wages and fringes for carpenters in this area. We therefore will engage in picketing your job sites for the sole purpose of advising members of the public of this fact. We do not claim to represent a majority of your employees in the carpenter classification and therefore are not making a demand for recognition or execution of a contract. If you can establish that you are in fact paying carpenter employees prevailing wage rates and fringes please notify us in writing to that effect and submit your proof. Failing to hear from you within 24 hours we must assume that our evidence is correct.

The Company's attorney replied with this wire on August 31:

> This is to inform you that Paul Compositor Construction is paying its carpenter employees prevailing or higher than prevailing wages and fringes and hereby requests that you notify it of any specific information to the contrary within 48 hours, or we will consider/ matter closed.

Respondent countered with this, also on August 31:

> Receipt your telegram acknowledged. We have photocopies of foreman's time book and check stubs which clearly prove Paul Compositor Company not paying prevailing wages and fringes to carpenters. These available your inspection our office. Please call for appointment. Make available to us company's payroll records for carpenters for past 90 days or we must assume your statements that Paul Compositor Company paying prevailing wage rates and fringes to carpenters not true.

At about the time of this exchange of wires, Kelley had a conversation with Charles Renfro, whose firm was developing a site in Santa Paula adjacent to that on which the Company was working. Kelley inquired about the framing contractor Renfro would be using, and whether it was a union firm. He mentioned that Compositor, next door, was nonunion and said that if Renfro's framer were also nonunion, both projects would be picketed.[6]

[3] The conversation as thus set forth is based on the generally consistent and credited testimony of Compositor and his wife, Geri, who was a few feet away in the kitchen. Kelley testified in effect that he could not recall this conversation. He did concede, however, that he spoke with Compositor "a couple times, but I don't recall if it was all at the same time."

[4] Case 31-CP-266.

[5] Case 31-RM-632.

[6] This is Renfro's credited version of the conversation, corroborated in major part by Tim McGraw, a principal in the firm for which the Company was working, and by Richard Davis, who was supervising Renfro's project. McGraw and Davis were nearby during portions of the conversation. The sense of Kelley's testimony on the point seems to be that this conversation never occurred, although this is not clear. His denial, such as it was, was less convincing in any event than Renfro's contrary and corroborated testimony.

Compositor did not respond to Respondent's last wire, and, on September 7, Respondent began picketing the Poli Street project anew, as well as the Santa Paula project on which the Company was working. Picketing on Poli Street continued until September 27 and in Santa Paula until October 30.[7] The signs in both instances stated:

Compositor Not Paying Prevailing Wages and Fringes

On September 8 the Company again filed a charge and a petition,[8] both of which were withdrawn for reasons untold on the record on September 26. The present charge, as earlier noted, was filed on September 15; and the Company filed yet another petition on September 25, expressly requesting an expedited election.[9] This petition was withdrawn on November 9.

The Company paid its carpenters on a piece-rate basis on the Santa Paula project. In late October, Compositor told Kelley that he wanted to sign a union contract, explaining that he was getting poor quality work despite paying "outrageous amounts of money." Kelley replied that he could not talk to Compositor about signing a contract at that time, but that Compositor probably could cut his piece rates by two or three cents "and still afford to pay the union benefits."

B. *Analysis*

Section 8(b)(7)(C) outlaws recognitional picketing by an uncertified union without an election petition having been filed "within a reasonable period of time not to exceed thirty days from the commencement of such picketing." This has been construed to mean that, barring unusual circumstances, recognitional picketing can continue for 30 days absent a petition without being unlawful;[10] and that the filing of a petition within 30 days of the picketing's onset generally "stays the limitation and picketing may continue pending the processing of the petition."[11]

Respondent's June 5–July 18 picketing of the Main Street and Poli Street projects plainly had the recognitional object of inducing the Company to sign a union contract;[12] and, taking the sites in combination, lasted well over 30 days.[13] The Company, however, filed an election petition on June 28, which was before 30 days had elapsed and which continued to be pending until dismissed by the Regional Director on July 19 – i.e., until after cessation of the June–July picketing. The principles just stated suggest, then, that the first round of picketing was at all times lawful.

The General Counsel seems to contend, however, that the original recognitional object carried over to the September 7–October 30 picketing; that the disclaimer of recognitional interest on which the Regional Director premised his July 19 dismissal of the first petition therefore improperly forestalled an expedited election and thus worked to nullify the protective shield of the petition; and that the first round of picketing consequently became unlawful after 30 days and the second round from its inception.

The General Counsel's theory appears sound. A union cannot hide behind a petition when its own conduct frustrates the realization of an expedited election as intended by the first proviso to Section 8(b)(7)(C).[14] Moreover, since the dismissal of the original charge concerning the June–July picketing was meant only to set the stage for an expedited election and not to be a final disposition on the merits, it cannot be deemed a bar to a finding based on the present charge regarding the legality of that picketing.[15]

But, to prevail on his theory, the General Counsel must show that the September 7–October 30 picketing had a recognitional object.[16] It is concluded, based on the totality of the evidence, that it did not, and that the complaint consequently is lacking in merit.

Given the 50-day hiatus between the two rounds of picketing, it is not to be presumed that the original recognitional object carried over to the second round. In addition, the second round was preceded by a significant change of circumstances—Respondent's obtaining hard evidence in mid-August that the Company indeed was paying below area standards. And even then, before starting to picket anew, Respondent informed the Company of this evidence and invited it to come forward with evidence of its own, which it declined to do. These circumstances, in combination with the area-standards purport of the picket signs and Respondent's disclaimers of a recognitional object to the Regional Director upon cessation of the former picketing and to the Company before resumption militate against such an object in the second round.[17]

[7] The picketing was enjoined by an order of a federal district court that issued on October 27.

[8] Cases 31-CP-274 and 31-RM-648.

[9] Case 31-RM-654.

[10] *Culinary Workers, Cooks, Bartenders and Hotel-Motel Service Employees Local No. 62, etc. (Tropics Enterprises, Inc., d/b/a Tropicana Lodge,* 172 NLRB 419, 423-424 (1968).

[11] *International Hod Carriers Building and Common Laborers Union of America, Local 840, AFL-CIO (Charles A. Blinne, d/b/a C.A. Blinne Construction Company),* 135 NLRB 1153, 1157 (1962).

[12] Thus, on May 31, Kelley told Compositor of the contract's terms and of various means Respondent might use to induce him to sign; on June 1, Kelley told Compositor that Respondent would withhold picketing for a few days to give him time to decide about signing, adding that, "one way or another," Respondent would get him to sign; and, on June 5, Compositor not having signed and without further word between Kelley and him, picketing began.

[13] A shift in picketing situs does not affect the running of the limitation period. *Retail Clerks Store Employees Union Local 1407, as chartered by Retail Clerks International Association, AFL-CIO (J.M. Balter Co., Inc., d/b/a Jaison's),* 215 NLRB 410 (1974).

[14] E.g., *Chicago Printing Pressmen's Union No. 3, and Franklin Union No. 4, International Printing Pressmen & Assistants Union of North America, AFL-CIO (Moore Laminating, Inc.),* 137 NLRB 729, 733 (1962).

[15] Sec. 101.23 of the Board's Statements of Procedure states: "(a) A representation petition . . . is handled under an expedited procedure when the investigation of the charge has revealed that: . . . (2) picketing of the employer is being conducted for an object proscribed by Section 8(b)(7) . . . ." Sec. 101.24(a) states: "Upon the determination that the issuance of a direction of election is warranted on the petition, the regional director, absent withdrawal of the charge, dismisses it subject to an appeal to the general counsel in Washington, D.C."

[16] A conclusion need not be reached in this decision whether the petitions filed by the Company on September 8 and 25, one or the other of which was pending from September 8 until after cessation of the second round of picketing, insulated that picketing from violation, even if recognitional, on and after the 8th.

[17] See generally, *John's Valley Foods,* 237 NLRB 425 (1978); *United Brotherhood of Carpenters and Joiners of America, Local No. 1245 AFL-CIO (New*

(Continued)

CONCLUSION OF LAW

Respondent did not violate the Act as alleged.

Upon the foregoing findings of fact, conclusions of law, and the entire record,[18] and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[19]

The complaint is dismissed in its entirety.

Mexico Properties, Inc.), 229 NLRB 236 (1977). The General Counsel argues that a recognitional object is inferable from Kelley's late-August comment to Renfro about the Company's being nonunion and the prospect of picketing, and from his October comment that Compositor probably could cut his piece rates on the Santa Paula project "and still afford to pay the union benefits." The latter comment, however, was too ambiguous to support the argued-for inference that Respondent knew the Company then to be meeting area standards; and the former, standing alone, was not sufficiently revealing of the proscribed object to overcome the array of countervailing evidence. See *Raymond F. Schweitzer, Inc. t/a Old Angus Restaurant*, 165 NLRB 675 (1967).

[18] Errors in the transcript have been noted and corrected.

[19] All outstanding motions inconsistent with this recommended Order hereby are denied. In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.