

In this way the company made it clear that it was not attempting to discourage Union membership by granting a wage raise shortly before an NLRB election. (Gray Envelope Mfg. Co. Inc. 11 LRRM 145; 45 NLRB 657) Page 46; 721 Bureau of National Affairs.

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PETRIE'S, AN OPERATING DIVISION OF RED ROBIN STORES, INC., Petitioner *and* RETAIL CLERKS' INTERNATIONAL ASSOCIATION, AND ITS LOCALS 128, 633, and 954, AFL. Case No. 8-RM-106. June 14, 1954

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 Edward A. Grupp, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

The Employer seeks a determination of the bargaining representative at its Toledo, Ohio, ladies' ready to wear store. On March 11, 1954, the Union, without having previously contacted the Employer, established a picket line before the Employer's store. The pickets, varying in number from 2 to 12, carried placards reading--"This Store Does Not Employ Union Labor Or Pay According to Union Standards," and "Do Not Patronize This Store--Unfair to Organized Labor."¹ On March 17, the Employer filed a petition for an election, and a hearing was held on March 30. In the meantime, the picketing continued.

The Union asserted that it had no interest in organizing or representing the employees, but explained the picketing was intended to exert pressure on the Employer to increase wage scales and better the terms of employment for its nonunion employees to conform with those prevailing for union employees in other stores. The Union further stated that it would remove the pickets if the Employer instituted the Union's standards.

¹ The placards bore the legend "Retail Clerks Council #6, A. F. of L." The record shows that this Council is comprised of the three locals named in the petition, and is authorized to represent them. There is no contention that the picketing is not being conducted on behalf of the locals.

At the hearing, the Union moved to dismiss the Employer's petition on the ground that it had not requested recognition as bargaining representative of the employees, and therefore no question concerning representation exists. The Employer contends that the Union's picketing constitutes a continuing demand for recognition. The hearing officer referred the Union's motion to the Board.

As we view the facts of this case, the Union is attempting to secure by means of picketing what is normally obtained at the bargaining table. This case must therefore be distinguished from those cases in which a union merely engages in organizational picketing. The conditions which the Union here stipulates for the removal of the pickets are inherently demands which are resolved through collective-bargaining negotiations between the Employer and the bargaining representative of his employees. The fact that the Union states that it will remove the pickets if the Employer accedes to its demands indicates persuasively that it is in reality attempting to force the Employer to bargain with it without regard to its majority status. Accordingly, we must equate the Union's activity to a demand for recognition. In these circumstances, we find that a question concerning representation exists, and shall direct an election among the employees in the unit hereinafter found appropriate.

4. The appropriate unit:

The Employer requests a unit of all employees at its Toledo, Ohio, store, with the statutory exclusions. The Union objects to the inclusion of two porters, an elevator operator, and a presser, on the ground that these types of employees are outside its jurisdiction. However, jurisdictional limitation on membership is not a valid reason for excluding employees from a bargaining unit.² In the past, the Board has recognized that a functional integration and mutuality of interest exists between these employees and other employees in retail establishments.³ These employees have the same hours and ultimate supervision as the other employees, and approximately the same wages as the others. There is an absence of any bargaining history, and no other union seeks to represent them. We shall include them in the unit.⁴

We find that all full-time and regular part-time employees at the Employer's Toledo, Ohio, store, including salesclerks, cashiers, porters, stockroom employees, window trimmers, pressers, and elevator operators, but excluding all other employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purpose of collective bargaining within the meaning of the Act.

[Text of Direction of Election omitted from publication.]

²Silverwood's, 92 NLRB 1114, at page 1118.

³J. C. Penney Company, 86 NLRB 920, at page 921.

⁴With the exception of the unit placement of the employees discussed in this paragraph, the unit accords with agreement of the parties.

Member Peteron, dissenting:

I cannot agree with my colleagues that there is any inconsistency here between the clear and unequivocal disclaimer of the Union and the continuance of picketing. The majority in effect admit that if the picketing were merely organizational the Union would not be forced to an election. However, they equate the picketing to a demand for recognition because they view the Union's conduct as an attempt "to force the Employer to bargain." The difficulty that I find in such analogy lies in the fact that the Union at no time requested recognition or bargaining or otherwise claimed to represent a majority of the Employer's employees. The fact that the Union was of the opinion that the Employer was unfair in not paying its employees according to union standards in the area, and by picketing sought to publicize its view in this regard, is not in my opinion tantamount to a demand for bargaining rights. The very most that might be inferred from the placards carried by the Union's pickets is that the Union might be desirous of organizing the employees of the Employer. As stated above, however, this the majority concedes would not be inconsistent with a valid disclaimer of representative status. Accordingly, I would dismiss the petition.⁵

Chairman Farmer took no part in the consideration of the above Decision and Direction of Election.

⁵See Hubach and Parkinson Motors, et al., 88 NLRB 1202; Hamilton's Ltd., 93 NLRB 1076 Smith's Hardware Company, 93 NLRB 1009.

CALIFORNIA FISH CANNERS ASSOCIATION, INC. AND ITS CONSTITUENT COMPANIES, STAR-KIST FOODS, INC., VAN CAMP SEA FOOD COMPANY, INC., PAN PACIFIC FISHERIES, AND OTHERS *and* LOCAL UNION 11, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AMERICAN FEDERATION OF LABOR, Petitioner. Case No. 21-RC-3299. June 14, 1954

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 Max Steinfeld, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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

1. The Employers¹ are engaged in commerce within the meaning of the Act.

¹The Employers' names appear in the caption as amended at the hearing and in conformance to the record.