

**Sprouse-Reitz Co., Inc., Petitioner and Retail Clerks Union, Local 1364, affiliated with Retail Clerks International Association, AFL-CIO,<sup>1</sup> and Culinary, Bartenders and Hotel Service Employees Union Local No. 470, affiliated with Hotel & Restaurant Employees & Bartenders International Union, AFL-CIO.<sup>2</sup>**  
*Case No. 20-RM-219. December 2, 1957*

### DECISION AND ORDER

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Robert J. Scolnik, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Leedom and Members Rodgers and Bean].

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

1. The Employer is engaged in commerce within the meaning of the Act.

2. No 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, an Oregon corporation, operates retail variety stores in 10 western States. Only its store in Red Bluff, California, is involved in this proceeding. On December 27, 1956, the Employer filed the instant petition seeking an election among its fountain employees and retail clerks at the Red Bluff store.<sup>3</sup> In support of its petition the Employer asserts that prior to, and on December 17 and 18, 1956, Retail Clerks Union, Local 1364, and Culinary Workers Union, Local 470, jointly made demands for recognition, in that they requested the Employer to sign a contract covering the employees in question, and on December 17, 1956, the Unions commenced to picket the Employer's premises.

The Employer's premises were being picketed at the time of the hearing on March 6, 1957.

The Unions deny making any demands for recognition, and assert that the picketing is for organizational purposes only. For the reasons set forth below, however, we deem it unnecessary to decide whether the Unions made a demand for recognition or whether the picketing is for organization or recognition purposes.

<sup>1</sup> Herein called Retail Clerks Union, Local 1364.

<sup>2</sup> Herein called Culinary Workers Union, Local 470.

<sup>3</sup> On April 27, 1951, Retail Clerks were certified as the bargaining representative of the employees in question. Following the certification, the parties attempted to negotiate a contract. Negotiations were discontinued in 1952.

There is no dispute that the Unions are acting jointly in this matter. However, the record shows that Culinary Workers Union, Local 470, one of the Unions so acting, has not complied with the filing requirements of Section 9 (f), (g), and (h) of the Act, and does not intend to so comply. Accordingly, for the reasons stated by the Board majority in *Darling and Company*, 116 NLRB 374, which holds that a noncomplying union shall not be the beneficiary of any Board certification, the Employer's petition must be dismissed.

[The Board dismissed the petition.]

MEMBER RODGERS, dissenting:

For the reasons stated in my dissenting opinion in the *Darling* case, 116 NLRB 374, I would not dismiss the instant petition merely because a noncomplying union is here involved. Moreover, as the record shows that the Unions demanded recognition and are striking for recognition, and that, therefore a question concerning representation exists, I would direct an immediate election to resolve the question.

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Local 1408, 1408-A and 1597, International Longshoremen's Association, Independent, and Dave Kennedy, their agent (Kaufmann<sup>1</sup> Shipping Company) and Limous Turner. *Case No. 12-CB-13. December 3, 1957*

### DECISION AND ORDER

On June 28, 1957, Trial Examiner David London issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action as set forth in the Intermediate Report, a copy of which is attached hereto. Thereafter, the Respondents filed their Exceptions to the Intermediate Report and **Brief**.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its power in connection with the case to a three-member panel [Chairman Leedom and Members Murdock and Rodgers].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed.<sup>2</sup>

<sup>1</sup> We correct the spelling of this name wherever it appears in the Intermediate Report and Appendix thereto.

<sup>2</sup> At the hearing Respondents contended that the complaint should be dismissed because the General Counsel had not sustained his burden of proving all allegations of the complaint, particularly the allegation that the discrimination against Turner was for the reason that he "was not a member of any Respondent Locals in good standing, and for