

CONCLUSIONS OF LAW

1. Edna and Gregory are, each of them, Employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Respondent is a labor organization within the meaning of Section 2(5) of the Act.
3. The Respondent has not engaged in the unfair labor practices alleged in the complaint herein.

[Recommendations omitted from publication.]

any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is:

(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by section 8(e);

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9: . . .

Section 8(e) of the Act provides, in pertinent part that:

(e) It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such an agreement shall be to such extent unenforceable and void: . . .

Miratti's, Inc., Petitioner and Retail Clerks International Association, Local 899, affiliated with the Retail Clerks International Association, AFL-CIO.¹ *Case No. 21-RM-665. August 2, 1961*

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Louis A. Gordon, 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. Retail Clerks International Association, Local 899, affiliated with the Retail Clerks International Association, AFL-CIO, is a labor organization within the meaning of the Act.
3. 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, for the following reasons:

The Union was the contractual representative of the Employer's

¹The name of the Union appears as amended at the hearing.

employees from 1953 until April 1956, when the agreement between the Union and Employer expired. Between April 1956 and October 1959, Betty Johnson, then secretary-treasurer of the Union, had about 12 conversations with Thomas Flynn, the Employer's labor relations representative, regarding a new contract. Most of these conversations took place early in this 3½-year period. In January 1960, a new secretary-treasurer of the Union was named and, for about 7 months following the aforementioned 3½-year period, the Union did not have any dealings with the Employer. This interlude was followed by an unsuccessful organizing campaign among the Employers' employees. Between May and July there were conversations between union and employer representatives, but the testimony is in conflict as to the number of conversations held and as to what was said during this period. For example, the Employer testified that the Union made demands for recognition in May. However, Harry Warren, who succeeded Johnson as secretary-treasurer, testified that no such demands were made. Warren testified that he only inquired of Flynn during contract negotiations involving other employers as to the manner in which the Union's contract with the Employer was terminated and, on May 25, talked to the Employer about the discharge of an employee McGuire who, Warren claimed, was terminated because of his role in the Union's unsuccessful organizing campaign.

At a meeting of the Santa Barbara Central Labor Council held on May 25, McGuire's discharge was discussed and Warren then learned that representatives of other unions were "amazed and appalled" to learn that the Employer did not have a contract with the Union; members of these other unions had been patronizing the Employer in the belief that the Employer had a union contract. Even after the expiration of the Employer's contract with the Union, for a period of time not disclosed by the record, signs continued to hang in the Employer's stores to the effect that the Employer had a contract with the Union.² On July 25, Warren reported to the Employer the feelings expressed at the Central Labor Council meeting and told him that the Union was obligated to advertise the facts to the public. He also told the Employer that he didn't want it to have any "misconceived" ideas that he was asking for a contract or claiming to represent the employees "in any shape, way or form," and that the Union's only interest was to advertise the fact that the Employer did not have a contract with the Union. On August 8, the Union began picketing the Employer with picket signs reading:

² At the June 14 meeting mentioned in the dissent, Flynn and Miratti proposed an election to determine the Union's majority status. Thereafter, Miratti himself testified, Warren asked whether cards "that he had or would have" would be sufficient. This testimony does not show a request for recognition as of June 14. It appears therefrom that Warren merely asked whether, if the Union obtained sufficient authorization cards, they would be accepted by the Employer as proof of majority status.

THIS PICKET IS HERE TO
INFORM THE GENERAL PUBLIC
THAT
MIRATTI'S DOES NOT HAVE
A CONTRACT
WITH RETAIL CLERK'S INTL. ASSN.

At the hearing in this case, the Union again disclaimed any interest in representing the Employer's employees.

Even assuming on these facts that a question concerning representation existed prior to July 25, the Union clearly and unequivocally disclaimed interest in the Employer's employees on that date. The dissent asserts that this was a self-serving declaration which does not override the intent of the Union which they discern in the Union's prior conduct and subsequent picketing. However, in any inquiry into the effectiveness of a disclaimer of prior action, it is the Union's contemporaneous and subsequent conduct which ought to receive particular attention. In this case, the Union, once having disclaimed in unmistakable terms, engaged in no action inconsistent therewith. Its picketing is accounted for by uncontradicted testimony which shows that it had no recognitional objective.³ At the hearing, the Union repeated its disclaimer.

If the Union's disclaimers are not effective ones, we fail to see how any union which has requested recognition can make an effective disclaimer, particularly if it thereafter pickets for any reason. We believe that effective disclaimers are possible and, further, that they should be recognized and accepted when they occur. We find that the Union's disclaimer in this case was an effective one. In view thereof, we find that no question concerning representation exists at this time, and shall dismiss the petition.

[The Board dismissed the petition.]

MEMBERS RODGERS and LEEDOM, dissenting:

The majority concludes, in effect, that even assuming a question concerning representation existed prior to July 25, 1960, Union Representative Warren's statements on that date to Miratti show that the Union no longer sought to represent the Employer's employees. We do not believe that the clear import of the Union's actions can be so conveniently changed by a simple self-serving statement.

³ The *Normandin Bros Company* case, 131 NLRB 1225, cited by the dissent is wholly distinguishable on its facts. For example, as found by the Board, the union in that case "limited its picketing to the service employee, back entrance of the plant on a side street and left unpatrolled the public or customer entrance located on a main thoroughfare." Because this case is distinguishable from *Normandin*, in that the Union's disclaimer was not equivocal, nor was its subsequent conduct inconsistent therewith, Member Fanning finds it unnecessary to dismiss the petition with prejudice to the Union's right to file a petition within 12 months, a course of action he deemed most desirable in *Normandin*.

What we have before us is a situation in which the Union has sought for a period of some 3 years to regain both recognition and a contract. Further, shortly after it learned on May 25, 1960, that other unions in the Central Labor Council were "amazed" it had no contract with Miratti, the Union sought on June 14, recognition on the basis of a card cross-check,⁴ even though it had abandoned as unsuccessful an organizing drive in May among Miratti's employees. Consequently, it seems evident to us that the picketing beginning August 8 announcing on the signs that Miratti had no union contract was clearly a continuation of the Union's persistent efforts over several years to gain a contract and reestablish itself as the employee's representative. Under these circumstances, it is wholly unrealistic to accept the Union's self-serving statement of July 25, 1960, disclaiming any recognitional objective as overriding the clear intent of its actions as finally given expression in its picketing.⁵ Accordingly, we would find that the Union's picketing is for a contract and, thus, tantamount to a present demand for recognition.⁶ It is, therefore, inconsistent, in our view, with the disclaimer and we would, in consequence, direct an election.

⁴ Warren testified he mentioned a card cross-check solely to get the Employer's reaction to the idea, a disclaimer of recognitional intent we find unbelievable.

⁵ See *Normandin Bros. Company*, 131 NLRB 1225.

⁶ See, for example, *Witwer Grocer Company*, 111 NLRB 936.

A. E. Schultz Fuel Co., Inc., and Midwest Bulk, Inc. and General Drivers and Dairy Employees Local Union 563, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America. Case No. 13-CA-3655. August 4, 1961

DECISION AND ORDER

On February 17, 1961, Trial Examiner Eugene E. Dixon 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 attached hereto. He also found that the Respondents had not engaged in certain other alleged unfair labor practices. Thereafter, the Respondents and the General Counsel filed exceptions to the Intermediate Report, and the General Counsel filed a supporting brief.

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