

the National Labor Relations Act preempts the jurisdiction of the circuit court.

2. The Employer, an Illinois corporation, is in the retail business and conducts a restaurant, cocktail lounge, and supper club known as Imperial West at 103d Street and Cicero Avenue, Oak Lawn, Illinois.

3. The Employer's total gross sales are less than \$300,000 annually and are largely founded on the offering of musical entertainment performed by members of the Union. In its statement of position, the Union does not affirmatively offer or assert any countervailing allegations as to the Employer's commerce data and volume of business but requests a hearing which has been denied. Under these circumstances, we rely upon the jurisdictional facts alleged herein by the Employer.

4. There have been no findings made by the circuit court respecting the aforesaid commerce data.

5. No representation or unfair labor practice proceeding involving the same labor dispute is pending before the Board.

On the basis of the above, the Board is of the opinion that:

1. The Employer is a retail enterprise engaged in the operation of a restaurant, cocktail lounge, and supper club in Oak Lawn, Illinois.²

2. The Board's current standard for asserting jurisdiction over retail enterprises within its statutory jurisdiction is an annual gross volume of business of at least \$500,000. *Carolina Supplies and Cement Co.*, 122 NLRB 88, 89. The Employer's annual gross volume of business of less than \$300,000 does not meet the retail standard for the assertion of jurisdiction by the Board.

Accordingly, the parties are advised, under Section 102.103 of the Board's Rules and Regulations, Series 8, as amended, that the Board would not assert jurisdiction over the Employer because the allegations submitted herein do not establish that the Employer's operations meet the Board's standard for asserting jurisdiction over retail enterprises.

² *Thunderbird Hotel, Inc and Joe Wells, et al, Co-Partners, d/b/a Thunderbird Hotel Company*, 144 NLRB 84; *Colonial Catering Company*, 137 NLRB 1607, 1608.

General Stores, Inc., Petitioner and Retail Clerks International Association, Local 1439, AFL-CIO, Union. *Case No. 19-RM-432. December 9, 1963.*

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Hearing Officer John N.

Zimmerman. 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 McCulloch and Members Leedom and Fanning].

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

1. General Stores, Inc., is a Washington corporation having two retail variety stores in Spokane, Washington. During the calendar year of 1962, the Employer-Petitioner purchased goods with a value in excess of \$50,000 from points outside the State of Washington; and received gross revenue from sales in excess of \$500,000. On these facts, we find that the Employer is engaged in commerce within the meaning of the Act and it will effectuate the policies of the Act to assert jurisdiction herein.

2. Retail Clerks International Association, Local 1439, 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:

On November 26, 1962, the Employer filed the petition herein alleging that the Union was then engaged in picketing the Employer with a purpose of organization or recognition. The Union had in fact made a demand for recognition in July 1962 and had maintained that demand until November 6, 1962, when it notified the Employer it was disclaiming any interest in representing a majority of the Employer's employees. The Union had, in conjunction with its demand, picketed the Employer with signs alleging that the Employer had refused to bargain. This picketing ceased on or before November 6. On November 13, 1962, the Employer's RM petition filed in Case No. 19-RM-421, was dismissed. On November 23, the Union resumed picketing, but with signs which read:

Please do not Patronize General Surplus Stores. For Information Only. General Stores are Non-Union. Retail Clerks International Association, Local 1439, AFL-CIO.

This picketing ceased in February 1963 and has not been resumed.

The Employer contends that the Union's subsequent picketing was inconsistent with its disclaimer of November 6, and constituted a continuation of its demand for recognition. The Union, on the other hand, asserts that the subsequent picketing was informational only in character, not inconsistent with its disclaimer, and that therefore no question concerning representation exists.

No express demand for recognition was made by the Union after the November 6 disclaimer was sent to the Employer. At the hearing, however, Vernon Humphries, a concessionaire who had rented and operated a pony ring in front of the Employer's store during 5 days in December 1962, testified that the pickets told him in the course of several conversations that the picketing would cease when the employer signed a contract with the Union. The pickets, who were not members of the Union, denied having made such statements. They further testified that they had been told by the union officials that the object of the picketing was "for information only." Other evidence adduced at the hearing discloses that the Union, at a time contemporaneous with its disclaimer, notified another labor organization that it had established a picket line at the Employer's store "for the purpose of a consumer boycott only." And in the notification given the other labor organization, the Union further stated that the picket line was not intended to interfere with service to the store.

On the basis of the preponderance of the foregoing evidence we are persuaded, and find, that the subsequent picketing by the Union was not inconsistent with its disclaimer of November 6, 1962. Whatever the conclusion derived from the conflicting evidence as to the objective of the picketing, the picketing ceased in February 1963, a month before the hearing, and at the hearing the Union again disclaimed interest in representing the Employer's employees. In these circumstances we cannot conclude that there is a claim for present recognition sufficient to support the Employer's petition for an election herein.¹

[The Board dismissed the petition.]

MEMBER LEEDOM, concurring:

I do not agree with my colleagues that the Union's picketing was consistent with its disclaimer of November 6, 1962. However, in view of the complete cessation of the picketing in February 1963, the Union's subsequent disclaimer at the hearing in this case is, in my opinion, unequivocal.² Consequently, I concur in the dismissal of the petition. I would, however, consistent with that well-established Board practice, as illustrated in the *Franklin Square* case, *supra*, note that the Board will entertain a motion requesting reinstatement of this petition in the event the Union, within 6 months from the date of this Order, engages in conduct inconsistent with its disclaimer.

¹ *Miratti's, Inc.*, 132 NLRB 699, 700-701; *Andes Candies, Inc.*, 133 NLRB 758, 760.

² See *Ricard T. Baylis, et al. co-partners d/b/a Franklin Square Lumber Co.*, 114 NLRB 519.