

disclaimer of a desire to represent the employees of Martino's.²⁷ I would find that a question concerning their representation exists and would entertain the Employer's petition for an election.²⁸

²⁷ Contrary to my colleagues, further evidence that the picketing had a recognitional object appears (1) in the admission of the Union's secretary-treasurer that the pickets would be removed upon Martino's execution of a contract, and (2) in the Union's newspaper advertisement calling attention to Martino's efforts "to get rid of union contract obligations" and its "opposition to the Union agreement."

²⁸ Since, in my view, there exists a question concerning representation, there is no room for the Employer to achieve indirectly what could not be accomplished directly, as my colleagues suggest. Indeed, an election here would be consistent with the congressional purpose to resolve representation disputes by the holding of an election and thereby to eliminate picketing as an industrial irritant whenever possible. To refuse to hold an election, as my colleagues do, is to allow the already prolonged picketing to continue indefinitely on the present basis.

Cockatoo, Inc.,¹ Employer-Petitioner and Culinary Workers & Bartenders Union, Local 814, Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO, Union

The Cockatoo Hotel,² Employer-Petitioner and Culinary Workers & Bartenders Union, Local 814, Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO, Union. *Cases Nos. 21-RM-832 and 21-RM-873. December 24, 1963*

DECISION AND ORDER

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Hearing Officer Carl Abrams. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.³

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

1. Cockatoo, Inc., which operates the Restaurant, is a corporation wholly owned by Andrew Lococo and his wife. The adjacent Hotel is also owned by Lococo and his wife in joint tenancy. Lococo testified that during its last fiscal year the Restaurant grossed in excess of \$1,000,000 and that it purchased goods exceeding \$100,000 in value from distributors who received these commodities directly from outside the State. He further testified that during its current fiscal year the Hotel will gross \$310,000 to \$330,000 and that for its previous fiscal year it grossed less than \$500,000. The Hotel's indirect annual purchases from outside the State exceed \$50,000 in value.

¹ Hereinafter referred to as "Restaurant"

² Hereinafter referred to as "Hotel."

³ The Union subpoenaed the records of both Restaurant and Hotel. A request to quash that subpoena was granted by the Hearing Officer and the Union's motion to strike testimony by Lococo, president of both Hotel and Restaurant, as to commerce facts, was denied. Due to the nature of our decision herein, we find it unnecessary to rule on the Union's exceptions to these rulings.

Ninety percent of its guests remain less than 1 month. In addition to the above-mentioned fact that Lococo and his wife are the sole owners of both the Restaurant and the Hotel, the record also reflects that Lococo hires the manager of the Hotel and the general manager and chef of the Restaurant, that both establishments share an accountant, and that Lococo controls policy for both. In view of the foregoing, we find that the Hotel and Restaurant constitute a single employer for jurisdictional purposes,⁴ and that it will effectuate the policy of the Act to assert jurisdiction over the Employer.

2. Culinary Workers & Bartenders Union, Local 814, Hotel and Restaurant Employees and Bartenders International Union, 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 Sections 9(c) (1) and 2(6) and (7) of the Act for the following reasons:

The Restaurant filed a petition on May 23, 1962 (Case No. 21-RM-832) alleging that the Union had presented it with a claim for recognition as the representative of certain of its employees. A Decision and Direction of Election was issued by the Regional Director on July 9, 1962, but on September 7, 1962, the Union filed a disclaimer of interest in the employees involved, and on September 10 the Regional Director issued an order dismissing the petition. The Hotel filed a petition on August 3, 1962 (Case No. 21-RM-851) and that petition was dismissed on August 9, 1962, when the Union disclaimed. On September 25, 1962, the Restaurant filed a motion requesting reinstatement of its petition in Case No. 21-RM-832 and on October 5, 1962, the Hotel filed a new petition (Case No. 21-RM-873). The Regional Director thereupon, on October 31, 1962, issued an order withdrawing dismissal of petition (Case No. 21-RM-832), and issued a notice of further hearing, order consolidating cases and notice of representation hearing in both cases.

On or about September 7, 1962, the Union began picketing both the front and rear entrances to the Hotel, and such picketing continued at least until the hearing in December 1962. The picket signs contained the following language:

Cockatoo Hotel Not Union.
Please Patronize Union Houses.

In addition, at least one sign was used which read, in part, as follows:

This Establishment Not Union.
Please Patronize Union Houses.

⁴ *Canton Carp's, Inc.*, 125 NLRB 483, 484.

There is no evidence to show that work stoppages or refusals to deliver goods either occurred or were induced.⁵

The Employer contends that such picketing was organizational or recognitional in nature, and that, due to the placement of the pickets near entrances to both the Hotel and the Restaurant and the use of at least the one sign reading, in part, "This Establishment Not Union," rather than "Cockatoo Hotel Not Union," such picketing was directed at both the Hotel and the Restaurant. The Employer further contends that, soon after picketing had begun, the Union made a demand for recognition inconsistent with its previous disclaimers.⁶

The Union contends that the picketing was directed only at the Hotel, and that it was solely informational in nature. Union Representative Debell denied making the above-mentioned demand for recognition.

A walkway leads from the rear customer entrance of the Hotel eastward to a public sidewalk. Approximately 35 feet to the north is a second parallel walkway extending from the sidewalk to a customer entrance to the Restaurant and to the Restaurant delivery entrance. A brick wall runs parallel to the sidewalk between the two walkways.

The record reflects that the Union picketed both the front and rear customer entrances to the Hotel. Several witnesses for the Employer testified that pickets patrolling the sidewalk at the Hotel's rear customer entrance followed a path past the Hotel entrance northward across the walkway leading to both the Restaurant's public entrance which is used by approximately 90 percent of the Restaurant's customers and the delivery entrance to the Restaurant. Other Employer and Union witnesses testified that the pickets did not cross the Restaurant walkway but patrolled only up to the walkway. According to the latter witnesses, the pickets were at all times at least 10 to 15 feet distant from the Restaurant entrance.

We find it unnecessary to determine whether the picketing was confined to the Hotel or was directed against both the Hotel and the Restaurant. Even if testimony is credited that the Restaurant walkway was picketed, it is obvious that only by such picketing could the Union achieve its perfectly legitimate purpose of informing 90 per-

⁵ Like our dissenting colleague, we take note of certain testimony in the record to the effect that on one occasion a delivery man was stopped by a picket and told that a strike was in progress. The testimony, however, was hearsay and, as such, unreliable. In any event, the record shows that the delivery was made forthwith. With regard to the purpose of the picketing, we consider it significant that on September 6, 1962, letters were sent by the Union to the Los Angeles County Federation of Labor, to The Cockatoo Hotel, to the Joint Council of Teamsters, and to the Food and Drug Council advising of the informational picket line and asking that deliveries continue to be made as usual.

⁶ Lococo, who, together with his wife, owns both the Restaurant and the Hotel, and Perconti, the manager of the Hotel, testified that on or about September 11, 1962, Debell, a union representative, requested that both the Hotel and the Restaurant enter into a contract with the Union.

cent of the Restaurant's customers that the establishment was "not union."⁷

In our opinion, it is clear that the picketing engaged in at customer entrances had as its purpose and effect the notification to the public of the fact that the Hotel (or the Hotel and the Restaurant) was "not union." In short, we find that the picketing was not in and of itself inconsistent with the Union's disclaimers.⁸

The Employer's second contention that Union Agent Debell demanded recognition of both the Hotel and the Restaurant on about September 11, 1962, is the sole remaining allegation of Union conduct inconsistent with its disclaimers. As previously indicated, Debell categorically denied making the demand. Other evidence adduced by the Union showed that, contemporaneous with the beginning of picketing, it had sent letters to the Employer and to various labor organizations denying any claim to represent the employees in question.⁹ Moreover, at the hearing the Union again asserted that it was not seeking representation of the employees of the Hotel or Restaurant. In these circumstances, we cannot conclude that either the Hotel or the Restaurant had ever been presented with a claim to recognize the Union which would support its petitions for an election herein.¹⁰ Accordingly, we conclude that the picketing described above is not inconsistent with the disclaimers by the Union. We, therefore, find that there is no question concerning representation and shall dismiss the petitions filed herein.

[The Board dismissed the petitions.]

MEMBER JENKINS took no part in the consideration of the above Decision and Order.

MEMBER LEEDOM, dissenting:

Unlike my colleagues, I would find the picketing to be inconsistent with the Union's disclaimers. As my colleagues point out, the Union contends that its picketing was solely informational in nature and was directed only at the Hotel. The Union's conduct, however, belies this contention. Thus, in at least one instance, a delivery man was stopped by a picket and told that there was a strike in progress, indicating that, rather than informational, the picketing was intended as a signal to employees of other employers not to cross the picket

⁷ Cf. *Normandin Bros. Company*, 131 NLRB 1225, 1226, wherein the Union picketed *only* at the employee-service entrance and not at the customer entrance.

⁸ *Miratti's, Inc.*, 132 NLRB 699.

⁹ See footnote 5, *supra*.

¹⁰ *Martino's Complete Home Furnishings*, 145 NLRB 604, *Andes Candies, Inc.*, 133 NLRB 758; *Miratti's, Inc.*, *supra*; cf. *Retail Clerks Union, Local No. 1404, AFL-CIO (Jay Jacobs Downtown, Inc.)*, 140 NLRB 1344.

line, and was so used. Further, the fact that pickets patrolled the path past the Hotel entrance northward across the walkway leading to the Restaurant's public entrance and the delivery entrance, and used at least one picket sign reading, in part, "This Establishment Not Union," clearly demonstrates to me that the picketing was directed at both the Hotel and the Restaurant.

Measuring this conduct of the Union against the fact that it is not disputed that the Union had theretofore sought recognition from the Restaurant and that the Union began its picketing on the very day it filed its disclaimer, thereby obviating the election directed by the Regional Director among the Restaurant's employees, I am persuaded that the Union has acted inconsistently with its disclaimers.¹¹ I would, therefore, find that there exist questions concerning representation in both these cases and would process the petitions.

¹¹ See my dissenting opinion in *Martino's*, *supra*.

Southern Transport, Inc. and Truck Drivers and Helpers Local Union No. 568, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case No. 26-CA-1489. December 24, 1963

DECISION AND ORDER

On August 20, 1963, Trial Examiner W. Gerard Ryan issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Intermediate Report. Thereafter, the Respondent filed a statement of objections and exceptions to the Intermediate Report.

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 Leedom and Brown].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the Respondent's statement, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner to the extent consistent herewith.

1. We find, in agreement with the Trial Examiner, that the Respondent violated Section 8(a)(5) and (1) of the Act by, *inter alia*, failing to meet at reasonable intervals with the Union, which was