

Queen's Table, Inc., d/b/a Rochelle's Restaurant,¹ Employer-Petitioner and Local California Joint Executive Board of Hotel and Restaurant Employees and Bartenders International Union of Long Beach and Orange County, AFL-CIO.² Case No. 21-RM-1149. June 9, 1965

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) (1) (B) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer I. W. Ein. 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 and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. Local California Joint Executive Board of Hotel and Restaurant Employees and Bartenders International Union of Long Beach and Orange County, AFL-CIO, is a labor organization within the meaning of the Act.

3. The Employer seeks an election in a unit composed of its employees at its Long Beach, California, restaurant. The Union contends that the petition should be dismissed because it has disclaimed any interest in representing the employees who are the subject of the petition, and, therefore, no question concerning representation exists.

The Employer's restaurant in Long Beach, California, known as Rochelle's, opened for business on November 17, 1964. About a week later, Ernest Geffroy, field representative of Culinary Union Local 681, an affiliate of the Union, informed William McLaughlin, manager of the Employer's restaurant, that the Union represented a majority of the employees in the restaurant and asked that the Employer execute a collective-bargaining agreement prepared by the Union covering those employees. McLaughlin replied that he would take the matter up with the officials of the Company and suggested that Geffroy leave the contract with him. On or about November 28, Geffroy met with Ben Rochelle, the Employer's president, and reiterated his demand for a contract. Rochelle was noncommittal, but assured Geffroy that he would discuss the matter with his associates. Thereafter, Rochelle was invited to appear on December 18 before the Los Angeles Central Labor Council to explain his refusal to sign a contract, and he was advised that if he did not sign an agreement by a certain date³ his

¹ The name of the Employer-Petitioner, hereinafter referred to as the Employer, appears as amended at the hearing.

² The name of the Union appears as amended at the hearing.

³ The record does not indicate the specific date mentioned by the Central Labor Council

establishment would be picketed. Rochelle did not appear, however, and the Central Labor Council accordingly authorized the Union to picket the restaurant. On December 18, the Union notified the Employer that it would be given until December 21 to sign a contract. The Employer did not communicate further with the Union and, on December 21, the Union began picketing the two customer entrances of the Employer's restaurant. The signs carried by the pickets read:

Notice to

Members of Organized Labor and their friends

**THIS
ESTABLISHMENT
IS
UNFAIR
We are
PICKETING**

Because this establishment is attempting to break down our standard of Wages, Vacations, Health, and Welfare, Work Day, Work Week, Contracts, as paid by over 600 union establishments.
PLEASE DO NOT PATRONIZE

Hotel and Restaurant Employees Joint Board

A. F. of L.-C. I. O.

J. A. Hamilton, Secretary

As soon as the picketing commenced, according to the testimony of the union representative, "most" of the employees who were members of the Union stopped working.⁴ On December 28, the Employer filed the instant petition, which alleges that the Union had presented a claim to be recognized as representative of its employees. On February 11, 1965, the date of the hearing, the picketing was still in progress; the legend on the picket signs had not changed; and most of the union members employed at the restaurant were still refusing to cross the picket line. At the hearing, the Union disclaimed any interest in representing the employees of the Employer. The Union, although admitting that prior to December 21, it sought immediate recognition, contends in effect that on December 21 it abandoned such object and that its only purpose in picketing was to advise the public of the Employer's substandard working conditions.

Section 9(c) (1) (B) of the Act provides in substance that the Board shall entertain an election petition filed by an employer when the employer is presented with a claim for statutory recognition. However, the Board has long held that a union may properly withdraw its claim to representation at the hearing on the employer's petition, and thereby foreclose a determination that a question concerning repre-

⁴The record does not establish how many of the Employer's total complement of approximately 40 employees were members of the Union

sentation exists, provided the union's disclaimer is clear and unequivocal, and the union's conduct is not otherwise inconsistent with its disclaimer to representation. The question to be decided in each case is whether the union has in good-faith disclaimed or whether its alleged disclaimer is simply a sham and for that reason not to be given full force and effect.⁵

On the basis of the record as a whole, we are unable to conclude that the Union's purported disclaimer at the hearing effectively withdrew its prior unequivocal claim for immediate recognition; rather, we find that the Union's entire course of conduct is inconsistent with its disclaimer.⁶ Thus, on several occasions between November 24 and December 18, the Union demanded that the Employer sign a contract. Although the Union contends that it gave up its recognition object on December 21, it did not inform the Employer of this asserted fact until almost 2 months later at the time of the hearing. Nor did the Union during the period between December 21 and February 11 make any attempt to inform the public by handbills or otherwise that it was no longer seeking immediate recognition. Moreover, although the picketing was allegedly to advise the public of the Employer's substandard working conditions, there is no evidence that the Union made any attempt to inquire into the Employer's wage structure or working conditions.⁷ Indeed, since the Union threatened the Employer with picketing if it did not sign a contract, and since the Central Labor Council authorized the picketing because Rochelle failed to appear at the meeting to explain his refusal to sign the contract, it is apparent that the picketing, which continued to and was in progress at the time of the hearing and the purported disclaimer, was from its inception an implementation of the Union's earlier bargaining demands.⁸

Accordingly, we find that a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c) (1) and Section 2(6) and (7) of the Act.

⁵ See, for example, *Peninsula General Tire Company, Inc*, 144 NLRB 1459.

⁶ *Kenneth Wong, et al., Co-Partners d/b/a Capitol Market No. 1, Capitol Grocery, Inc, d/b/a Capitol Market No. 2*, 145 NLRB 1430

⁷ The record shows only that the Union "knew" that the Employer had no health and welfare program and that one of its employees had worked up to 18 hours per day. See *Peninsula General Tire Company, Inc, supra*, at 1461-1462.

⁸ *Martino's Complete Home Furnishings*, 145 NLRB 604, *Andes Candies, Inc*, 133 NLRB 758, and *Mvrat's, Inc*, 132 NLRB 699, in which the Board accepted unions' disclaimers, are distinguishable on their facts. In *Martino's*, almost 2 years had elapsed between the union's last demand for recognition and the date of the hearing, here, on the other hand, the Union's last demand for recognition was less than 2 months prior to the hearing; moreover, in *Martino's* unlike here, the union continually disclaimed a present recognition objective in its leaflets to the public. In *Andes Candies*, unlike here, the employer had never been presented with a claim to recognize the union. And in *Mvrat's*, also unlike here, the union, prior to the commencement of the picketing and before the hearing took place, informed the employer that it was not seeking to represent its employees. See *Kenneth Wong, et al., Co-Partners d/b/a Capitol Market, No. 1; et al., supra* at 1432, footnote 5.

4. The parties stipulated, and we find, that the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees who work 20 hours or more per week as waiters, waitresses, bartenders, dishwashers, cooks, miscellaneous kitchen helpers, hostesses, and cashiers at the Employer's Long Beach, California, restaurant, but excluding all office clerical employees, watchmen, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

Women's Bindery Union, Local No. 42, International Brotherhood of Bookbinders, AFL-CIO and National Publishing Division, McCall Corporation. *Case No. 5-CD-97. June 10, 1965*

DECISION AND ORDER

Upon a charge filed on March 12 and amended March 19, 1964, by National Publishing Division, McCall Corporation, hereinafter called the Employer, the General Counsel for the National Labor Relations Board, by the Regional Director for Region 5, issued a complaint dated February 9, 1965, against Women's Bindery Union, Local No. 42, International Brotherhood of Bookbinders, AFL-CIO, hereinafter called the Respondent, alleging that the Respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8(b) (4) (ii) (D) and Section (2) (6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and the complaint with notice of hearing were duly served upon Respondent and the Employer. Thereafter, the Respondent filed an answer denying the commission of any unfair labor practices.

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

With respect to the unfair labor practices, the complaint alleged, in substance, that the Board, in a proceeding under Section 10(k) of the Act, had determined that the Washington Mailers' Union, No. 29, affiliated with the International Typographical Union, AFL-CIO, hereinafter called the Mailers, rather than the Respondent, was entitled to perform the work in dispute, consisting of the inserting of more than 1 and less than 21 copies of magazines into envelopes for mailing; that the Respondent has refused to comply with the terms of the Board's Decision and Determination of Dispute; that since on or about