

**Raymond F. Schweitzer, Inc. t/a Old Angus Restaurant, Employer-Petitioner and Joint Executive Board of the Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO. Case 5-RM-559.**

June 20, 1967

DECISION AND ORDER

BY CHAIRMAN MCCULLOCH AND MEMBERS FANNING AND BROWN

Upon a petition<sup>1</sup> duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Hearing Officer Charles B. Slaughter. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. Thereafter, the Employer-Petitioner and the Union filed briefs.<sup>2</sup>

Pursuant to the provisions of Section 3(b) of the Act, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

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 here.

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

3. The Employer seeks an election among a unit of its restaurant employees. The Union contends it has not in the past and does not now seek to represent the Employer's employees, and thus requests that the petition be dismissed. The Union has picketed the Employer's customer entrances at its Old Angus Restaurant and distributed leaflets there since November 4, 1965.<sup>3</sup> The picket signs and leaflets are addressed to the public and urge the public not to patronize the Employer because it has no contract with the Union, pays substandard wages, and has substandard working conditions. The

evidence is uncontradicted that the Union has not contacted the Employer since the picket line was established and does not represent any of Employer's employees. Additionally, it stated it would not accept a contract or recognition from the Employer if such were offered. Rather, the Union maintains that its purpose in picketing is solely to inform the public that the Employer has no contract with it, and has what it alleges are substandard terms and conditions of employment.

The Employer contends, however, that the picketing has from the outset had an organizational and recognitional objective. In support of its position it contends that its terms and conditions of employment are not substandard and argues that the Union's recognitional object is also shown by the facts that the number of pickets varied with the number of employees, not customers, and that the picket signs stated the Employer had no contract with the Union. It also notes several conversations, in which it was not involved, where recognition or the organization of its employees was mentioned, and the fact the Union acknowledged that it has come to represent employees of other employers whom it has in the past picketed for informational purposes.

Assuming that the factors relied upon by the Employer suggest that the Union has some interest in organizing its employees and in ultimately representing them, there is nevertheless no basis in the circumstances for concluding that either separately or together the Union's activities were tantamount to a *present* demand for recognition. Consequently, and also in view of the Union's disclaimer and the fact the Employer has failed to show it has engaged in conduct inconsistent with that disclaimer, we find that no question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9(c)(1)(B) and Section 2(6) and (7) of the Act.<sup>4</sup> We shall, therefore, dismiss the petition.

ORDER

IT IS HEREBY ORDERED that the petition filed in this case be, and it hereby is, dismissed.

an order transferring the case to the Board for decision

<sup>2</sup> The Union's request that Appendix A of the Employer's brief be stricken is hereby denied as lacking in merit

<sup>3</sup> It has not picketed the Employer's supply entrance

<sup>4</sup> See *Martino's Complete Home Furnishings*, 145 NLRB 604

<sup>1</sup> The Regional Director initially dismissed the petition. The Employer appealed the matter to the Board, which reversed the Regional Director's dismissal and remanded the case to him for a hearing. After the hearing and pursuant to the Board Rules and Regulations, Series 8, as amended, the Regional Director issued