Autohaus-Brugger, Inc., Petitioner *and* International Association of Machinists and Aerospace Workers, AFL–CIO, Local Lodge No. 1414. Case 20–RM–1100

October 11, 1968

DECISION AND ORDER

BY MEMBERS BROWN, JENKINS, AND ZAGORIA

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act,[1] a hearing was held before Hearing Officer Kenneth N. Silbert. Following the hearing, and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended, and by the direction of the Regional Director for Region 20, this case was transferred to the National Labor Relations Board for decision.

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

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They 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 here.[2]

International Association of Machinists and Aerospace Workers, AFL–CIO, Local Lodge No. 1414, is a labor organization within the meaning of the Act.

On August 2, 1968, the CAE filed the instant petition alleging that the Union's picketing of the Employer had an organizational object and therefore raises a question concerning representation. The unit was stipulated.[3]

On July 30, 1968, the Union began picketing the business premises of the Employer, and such picketing continued at least until the hearing. The type of signs carried contained the following language

Attention, Public Only Autohaus-Brugger Non-Union
Please Do Not Patronize
Peninsula Auto Mechanics Local 1414
I.A.M. and A.W., AFL–CIO

The Employer contends that Union representative King stated to CAE representative Braun that the Union would picket until the Employer signed a union contract, this being tantamount to a demand for recognition. King, while admitting that a conversation with Braun took place, did not recall making the alleged statement. Other evidence adduced by the Union showed that prior to the beginning of the picketing, it had sent a letter to the Employer denying any claim to represent the employees in question, and prior to the hearing, it had filed a disclaimer with the Regional Office of the Board.

In our opinion, it is clear that the picketing engaged in had as its purpose and effect the notification to the public that the Employer's business was "non-union." In short, we find that the picketing was not inconsistent with the Union's disclaimer.[4]

Even assuming that the Union has some interest in organizing the employees in question and in ultimately representing them, there is nevertheless no basis in the circumstances for concluding that 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 that the Employer has failed to show that the Union has engaged in conduct inconsistent with that disclaimer, we find that no question affecting commerce exists within the meaning of the Act.[5] We shall, therefore, dismiss the petition.

ORDER

It is hereby ordered that the petition filed in this case be, and it hereby is, dismissed.

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[1] The instant petition was filed by the California Association of Employers, hereinafter referred to as CAE, for and on behalf of Autohaus-Brugger, Inc.

[2] The parties stipulated that the Employer is a California corporation engaged in the retail sale and servicing of automobiles, and in the course and conduct of its business the Employer annually makes purchases of goods and materials valued in excess of $50,000 from outside the State of California.

[3] At the hearing the parties stipulated that the following unit is appropriate "All automotive mechanics of the Employer at its Palo Alto location, excluding salesmen, office clericals, service manager, assistant service manager, guards and supervisors as defined by the Act."

[4] *Miratti's Inc.*, 132 NLRB 699, *Cockatoo, Inc.*, 145 NLRB 611. We find it unnecessary to resolve the legal issue as to whether picketing outside the protection of the informational proviso to Section 8(b)(7)(C) would require an election under the circumstances presented. Here, the evidence in support of any claim that the picketing was not of the lawful informational type protected by Section 8(b)(7)(C) is limited to a single refusal by a deliveryman to cross the picket line Thus, on the first or second day of picketing, a driver, employed by an oil company, refused to make a delivery Thereafter, the Union informed the oil company that the picketing was informational and not intended to cause work stoppages of any kind. As there have been no further stoppages, and the above incident failed to constitute an "effect" within the meaning of Section 8(b)(7)(C), the record clearly indicates that the picketing conformed to that section's requirements for legitimate publicity picketing

[5] See *Raymond F. Schweitzer, Inc* , 165 NLRB No. 84