

Payless Drug Store of Aberdeen, Inc. d/b/a House of Values, Employer-Petitioner and Retail Clerks Union Local No. 629, Retail Clerks International Association, AFL-CIO. Case 19-RM-823

February 23, 1971

DECISION AND ORDER

BY MEMBERS FANNING, BROWN, AND JENKINS

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer John M. Cronin on October 15, 1970. Thereafter, on October 21, 1970, the Regional Director for Region 19 transferred this case to the National Labor Relations Board for decision. Briefs have been timely filed by the Employer and the Union.

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.

2. Retail Clerks Union Local No. 629, Retail Clerks International Association, AFL-CIO, and Teamsters Union Local No. 699, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, are labor organizations 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 Employer's store involved in this case opened on or about September 28, 1969. At the same time, pickets from Retail Clerks Union Local No. 629 began picketing the store with informational picket signs; i.e., "This Store does not have a Union Agreement—Please Do Not Patronize." The Clerks informed the Employer and other unions in the area of their intent to engage in informational picketing. At various times the Clerks pickets were joined by members of other unions carrying signs in support of the Clerks. This picketing continued without incident or stoppages until March 10, 1970. On March 10 members of Teamsters Union Local No. 699 set up picket lines at the entrances to the shopping center, and began stopping deliveries. The Clerks continued to picket peacefully at the entrances to the Employer's store.

On that same day, the Employer filed a charge¹

alleging a violation of Section 8(b)(7)(C) of the Act and the instant petition. Thereafter, the Regional Director for Region 19 conducted an investigation and determined that an election was appropriate. Following the Employer's withdrawal of its charge on March 23, 1970, the Regional Director issued his direction of election on March 25, 1970. Thereafter, the Union ceased picketing and informed the Regional Director that it disclaimed any interest in representing the employees covered by the petition. On this basis the Regional Director informed the parties, by telegram dated March 27, 1970, that the election was postponed indefinitely, contingent on no further action being taken inconsistent with the disclaimer.

On April 9, 1970, the Employer filed a request for special permission to appeal Regional Director's indefinite postponement of election, which was denied by the Board on April 14, 1970. On June 9, 1970, the Board, having *sua sponte* reconsidered its denial, rescinded it and granted the Employer's request for special permission to appeal. Briefs were filed by the Employer and by the Union, and on August 6, 1970, the Board issued an Order Directing Hearing to resolve the issues raised by the Employer's appeal of the indefinite postponement of election.

On August 19, 1970, the Employer filed a motion to revoke Order Directing Hearing and for Other Relief, which was denied on August 21, 1970. The hearing was held on October 15, 1970. On October 21, 1970, the Regional Director transferred the case to the Board, following which the parties submitted briefs to the Board in support of their positions.

The Employer contends that the Clerks' object in picketing was to force the Employer to recognize that Union and to sign a contract covering the Employer's employees; that the Clerks' "informational" picketing" was a charade; and that when this charade proved ineffective the Clerks openly accepted the increased economic pressure of delivery and service interruption by the Teamsters, with the hope that this pressure might accelerate the securing of a labor contract.

The Employer's contentions fail to consider the proviso to Section 8(b)(7)(C) which allows informational picketing, unless an effect is to induce a stoppage in pickup, delivery, or transport of any goods, or in performance of any services. The Clerks picketed the Employer's entrances from September 28, 1969, to March 26, 1970, and there is no evidence that this picketing resulted in any stoppages. However, on March 10, 1970, the Teamsters began picketing which did result in stoppages. The record fails to establish any connection between the picketing of the Clerks and that of the Teamsters. The Employer's apparent

¹ Case 19-CP-138

contention that the Clerks was under some duty to persuade the Teamsters to cease their stoppages of deliveries is without merit.²

Since no connection was shown between the informational picketing of the Clerks, and the separate picketing of the Teamsters, we find that the Clerks' picketing did not have the "effect" proscribed by Section 8(b)(7)(C), and it was therefore legitimate proviso picketing.³

² The Clerks had taken the precautionary measure of notifying the Teamsters that the picketing's purpose was informational and not intended to interfere with pickups and deliveries.

³ *Retail Clerks Union Local 324 and Retail Clerks Union Local 770 (Barker Bros.)*, 138 NLRB 478.

In view of the above finding, there were no grounds for direction of an expedited election under Section 8(b)(7)(C). Since no demand was made of the Employer for recognition of the Clerks as representative of the employees involved, and since the Clerks, which was engaged in informational picketing, disclaimed any interest in the employees involved, no question concerning representation exists, and we shall dismiss the petition.

ORDER

It is hereby ordered that the petition filed herein be, and it hereby is, dismissed.