

**Los Angeles Tile Jobbers, Inc. and Rene Castillo,
Employee-Petitioner and General Warehousemen's
Local #598, International Brotherhood of Team-
sters, Chauffeurs, Warehousemen and Helpers of
America, Union. Case 31-RD-246**

May 21, 1974

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS
FANNING 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 Renato Della Rocca on January 29, 1974. Following the hearing, pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended, this proceeding was transferred to the National Labor Relations Board for decision. None of the parties filed a brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding 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. The rulings 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. The petition asserts that the Union therein named, a labor organization, is no longer the representative, as defined in Section 9(a) of the Act, of the employees designated in the petition.

3. No 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, for the following reasons.

The Employer and the Union have had a bargaining relationship which resulted in a contract executed on July 31, 1970, for a 3-year period with a terminal date of July 31, 1973. Prior to July 31, 1973, a request for modification of the agreement was received by the Employer from the Union.

On June 18, 1973, the Union filed an unfair labor practice charge in Case 31-CA-3823, alleging that the Employer unlawfully refused to bargain in

violation of Section 8(a)(5) of the Act, and that the Employer violated Section 8(a)(1) of the Act by interfering with and undermining the Union's majority status. The 8(a)(1) allegation was based on the Employer's alleged individual bargaining and statements to employees, urging them to give up the Union.

In a letter dated August 8, 1973, to the Board's Regional Office, the Employer promised to bargain in good faith and not to challenge the Union's majority status. Accordingly, the charge was amended on August 13, 1973, to delete the allegations concerning Section 8(a)(5). With respect to the outstanding 8(a)(1) allegations, the Regional Office approved a bilateral informal settlement agreement on August 31, 1973. The usual notice was posted and the record indicates that the posting period ended on November 8, 1973. In the interim, a decertification petition in Case 31-RD-232, filed on August 20, 1973, was dismissed administratively. An appeal was taken to the Board, which on October 9, 1973, affirmed the Regional Director's dismissal of the petition. The instant decertification petition was filed on December 12, 1973.

At the hearing herein, the Union took the position that the instant petition should be dismissed on the grounds that a reasonable period of time within which to bargain for and reach a new contract had not elapsed following the Employer's agreement to bargain in good faith and the approval of the settlement agreement. We agree.

In this case, approximately 4 months had elapsed from the date of the Employer's letter in which it agreed to bargain in good faith, to the date the petition was filed. Even less time had elapsed from the date of the settlement agreement to the date the petition was filed. Although the parties were meeting throughout this period, the bargaining was clouded by an earlier decertification petition, finally dismissed on October 9, 1973, and the notice-posting period, which expired approximately 1 month prior to the date of the petition herein. In these circumstances, we conclude that a reasonable time for collective bargaining had not elapsed since the settlement of the unfair labor practice charges. Accordingly, we shall dismiss the petition.¹

ORDER

It is hereby ordered that the petition filed in Case 31-RD-246 by Rene Castillo be, and it hereby is, dismissed.

¹ *Poole Foundry and Machine Company*, 95 NLRB 34, enfd 192 F.2d 740 (CA 4), cert denied 342 U.S. 954, *Dick Brothers, Inc.*, 110 NLRB