

Roberts Tires¹ and Teamsters Automotive Employees Union, Local 78, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.² Case 20-RM-1718

June 28, 1974

DECISION AND DIRECTION OF ELECTION

BY CHAIRMAN MILLER AND MEMBERS JENKINS
AND KENNEDY

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Robert C. Grace. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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.

Upon the entire record in this case, including the briefs filed by both parties, the Board finds:

1. At the hearing, the Union questioned whether the Employer's operations meet applicable standards for assertion of the Board's jurisdiction. With respect to this issue, the uncontroverted record evidence shows that the Employer, a partnership, is engaged in the recapping, installation, and sale (both retail and nonretail) of tires at its sole location in Oakland, California. During the past calendar year, the Employer's gross sales were approximately \$360,000, more than \$50,000 of which was derived from wholesale tire sales to commercial accounts. Also, during the same period, the Employer purchased tires valued in excess of \$50,000 from local suppliers who had received the tires from points located outside the State of California.

On the basis of the foregoing, we find that the Employer is engaged in commerce within the meaning of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.³

2. The Union is a labor organization within the meaning of the Act.

3. The Employer seeks an election in a unit of its tire mounters and mounter-salesmen. The Union moved that the petition be dismissed on the ground that it has no interest in representing the employees who are the subject of the petition and that, therefore, no question concerning representation exists.

The Employer's operation consists of the wholesale

and retail sale and service of vehicular tires. The owners, Richard Wagner and Arthur Thomas, purchased the business in early January 1973 and commenced operations. Their predecessor had a collective-bargaining agreement with the Union which was effective by its terms from August 12, 1971, through August 11, 1974. In late March,⁴ Union Vice President G. Wallace and Business Representative J. Corniola advised the Union's executive Board that it had unsuccessfully attempted to get the Employer to sign the contract which was in effect at the time of the Employer's takeover of the operation.⁵ After some discussion, the executive board decided to engage in informational picketing of the Employer's premises.

On June 1, the Union began and continues to picket⁶ the Employer's premises carrying signs containing the following legend:

To the Public, ROBERT TIRE employs tiremen under substandard wage and working conditions—
Unfair.

In October and November, two meetings took place between the parties. Present at the October meeting were Messrs. Wallace, Wagner, York, the Union's secretary-treasurer, and an undisclosed person. It is undisputed that Wagner initiated the conversation by asking, "What could be done to get rid of the picket line?" Wallace answered that he did not know and then asked Wagner, "What would [he] like to do about it?" There was discussion about an election but Wallace expressed no interest. The November meeting was similar to the October meeting which ended with the parties accomplishing little, if anything, by way of a resolution. However, at the hearing, Wallace testified that during the Union's executive board meetings which centered around the Employer's refusal to sign the collective-bargaining agreement he offered during the March meeting, it was discussed that if the Company was willing to meet and negotiate a contract the Union would sit and negotiate with

⁴ Except as otherwise indicated, all dates refer to 1973

⁵ The testimony with respect to the events that transpired during the March meeting is in conflict. However, it is undisputed that the union representatives asked the Employer to sign the collective-bargaining agreement which the Union had with the predecessor employer. Thomas refused to sign the agreement. According to Thomas, there was no discussion or comparison of the benefits the Employer was paying employees as contrasted to the Union's benefit package. Wallace's testimony disputes this and his testimony is corroborated by the version testified to by Wagner, i.e., that there was a comparison of the two plans. Based on the evidence, it suffices to say that the two plans were comparable though not identical in all respects. Thomas also testified that Corniola, at the end of the March meeting, threatened to bring the pickets down to force the Employer to sign the agreement. Wallace denied that any such statement was made by Corniola. Corniola and Wagner did not testify on this point.

⁶ On April 12, prior to its picketing, the Union sent the Employer a letter disclaiming any interest in representing the employees. A similar letter was again sent to the Employer's counsel a few days prior to the hearing.

¹ Hereinafter referred to as the Employer.

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

³ *Culligan Soft Water Service*, 149 NLRB 2.

them and the picket line would be removed as soon as the parties executed a contract.

On December 26, 1973, the Employer filed this petition⁷ and the hearing was held on January 9, 1974. As stated, the Union has by letter and other communications disclaimed any interest in the employees covered by this petition.

On this record, we are persuaded that a purpose of the Union's picketing was to persuade the Employer to recognize and bargain with it and to assume the existing collective-bargaining agreement. Particularly indicative of this are the circumstances giving rise to the picketing, including the Union's admitted attempt to persuade the Employer to sign the existing agreement just a few weeks prior to its disclaimer, and the Union's failure to inquire, in any significant manner, into the Employer's wages and working conditions. Also revealing is Wallace's testimony regarding the discussions that took place at the Union's executive board meeting when the decision was made to establish an informational picket line and what action

⁷ The Employer filed 8(b)(7) charges which were later withdrawn in December.

would be necessary on the part of the Employer to get the Union to remove the pickets.

Our conclusion is that the Union has acted inconsistently with its disclaimers and that its picketing, now as when it began, is tantamount to a demand for recognition. 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.

4. In agreement with the parties, we find the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within Section 9(b) of the Act:

All tire mounters and mounter-salesmen employed at the Employer's Oakland, California place of business, excluding all managerial employees, guards and supervisors as defined in the Act.

[Direction of Election and *Excelsior* footnote omitted from publication.]