

Borel Restaurant Corporation d/b/a Rusty Scupper, Employer-Petitioner and Waiters, Waitresses and Service Crafts Local No. 31 and Bartenders Union Local 52 and Cooks Union Local 228. Case 20-RM-1785

November 29, 1974

DECISION AND DIRECTION OF ELECTION

BY MEMBERS FANNING, JENKINS, AND PENELLO

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Earl D. Brand. Following the close of the hearing the Regional Director for Region 20 transferred this case to the Board for decision. No briefs have been filed.

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. They are hereby affirmed.

Upon the entire record in this case, the Board finds:

1. The Employer-Petitioner is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.¹

2. Waiters, Waitresses and Service Crafts Local No. 31, Bartenders Union Local 52, and Cooks Union Local 228, hereinafter referred to as the Unions, are labor organizations within the meaning of the Act.

3. On August 12, 1974, the Employer-Petitioner filed the instant petition contending that the Unions' picketing of the Employer has a recognition object and therefore raises a question concerning representation. The Unions dispute this, contending that the picketing was purely informational in nature in that they have not made a demand for recognition upon the Employer and have disclaimed any interest in representing the employees of the Employer.

On August 9, 1974, the Unions began picketing the business premises of the Employer-Petitioner, and such picketing continued at least until the time of the hearing. The signs carried by the pickets, none of whom were employees of the Employer, contained the following language: "Consumers Please Boycott. Rusty Scupper does not hire union members. Bartenders Local 52, Cooks Union Local 228, Waiters, Waitresses and Service Crafts Local 31, AFL-CIO. Please don't patronize." The picketing occurred at customer and service-

employee entrances between the hours of 10 a.m. and 9:30 p.m. The Employer's business hours are from 11 a.m. to 9:30 p.m. As a result of the picketing, suppliers, contractors, and delivery men have not crossed the picket line to deliver supplies and perform services on the Employer's premises. In addition, there have been complaints by customers of interference from the pickets.

We disagree with the Unions' contention that their picketing was wholly informational in purpose, and notwithstanding their disclaimer to the contrary, find that one of the objects of the picketing herein was to obtain recognition as the bargaining representatives for the employee of the Employer. Though the picket signs were addressed to the consuming public, it is clear that the picketing itself was aimed beyond customers of the restaurant to its employees, among others. As indicated above, the picketing was conducted during nonbusiness hours at service-employee entrances, as well as those used by customers. That the Unions chose to picket when the restaurant was not yet open to customers and at entrances not used by them cannot be reconciled with the alleged limited purposes of the picketing; i.e., of communication with the public.³ Rather, we conclude that such picketing indicates an immediate interest on the part of the Unions in organizing and representing the Employer's employees—an object already implied by the "does not hire union members" legend appearing on the picket signs.⁴ Therefore, we find that the Unions' picketing constitutes a present demand for recognition and is inconsistent with their disclaimer.⁵ Accordingly we find that a question affecting commerce exists concerning the representation of employees of the Employer-Petitioner within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.⁶

4. The parties stipulated, and we find, that the following employees constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All employees of the Employer at its 15 Embarcadero West, Oakland, California operation, excluding office clerical employees, guards and supervisors as defined in the Act.

³ *Local 3, International Brotherhood of Electrical Workers, AFL-CIO (Jack Picoult)*, 144 NLRB 5 (1963), enf'd 449 F.2d 600 (CA 2, 1964)

⁴ *Local Joint Executive Board of Hotel and Restaurant Employees and Bartenders International Union of Long Beach and Orange County, et al. (Crown Cafeteria)*, 135 NLRB 1183, aff'd sub nom *Leonard Smittey, et al. v. NLRB*, 327 F.2d 351 (CA 9, 1964)

⁵ *Normandin Bros. Company*, 131 NLRB 1225 (1961)

⁶ Cf. *Autohause-Brugger, Inc.*, 173 NLRB 184 (1968) In view of our finding herein, we do not reach the issue of whether the interruption of deliveries constitutes evidence of the existence of a question concerning representation

¹ The Employer-Petitioner is one of a number of restaurants operated by the Borel Restaurant Corporation, which annually has gross revenues in excess of \$500,000 and makes purchases of goods and materials valued in excess of \$50,000 from outside the State of California

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

MEMBER FANNING, dissenting:

For the reason stated in my dissenting opinion in *Normandin Bros.*, 131 NLRB 1225, 1227 (1961), I would dismiss this petition. Although I agree with the majority that the timing and location of the Union's pickets did not confine the impact of the picketing to consumers, the holding of an election in the face of a union's disclaimer of majority status is not, in my opinion, warranted except under the provisions of Section

8(b)(7)(C), which has not been invoked in this case. In view of the Union's equivocal picketing I would otherwise deny it representational rights as to these employees for a period of 12 months. It seems to me this is preferable to holding an election where there has been no claim to majority status and no demand for recognition and where, as a consequence, the employees will be precluded from choosing another union for that period of time. I believe that result cannot be justified equitably or legally under the provisions of Section 9(c)(1).