Sears, Roebuck and Co. *and* Casimer A. Matejko, Petitioner and Retail Store Employees Union, Local 876, United Food and Commercial Workers International Union, AFL-CIO. Case 7-RD-1677

November 5, 1980

DECISION ON REVIEW AND DIRECTION OF ELECTION

BY CHAIRMAN FANNING AND MEMBERS 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 Michael D. Pearson of the National Labor Relations Board. On May 21, 1980, the Regional Director for Region 7 issued a Decision and Order in the above-entitled proceeding in which he dismissed the instant petition on the ground that it did not specify a unit appropriate for the conduct of a decertification election. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Petitioner and the Employer each filed a timely request for review of the Regional Director's decision, contending that the Regional Director erred in dismissing Petitioner's petition.

By telegraphic order dated July 21, 1980, the Board granted the request for review. Thereafter, the Employer and Retail Store Employees Union, Local 876, United Food and Commercial Workers International Union, AFL-CIO (hereinafter the Union), each filed a brief on review.

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 considered the entire record in this case, including the briefs on review, and makes the following findings:

The Employer operates a number of stores in the Detroit, Michigan, metropolitan area. The Employer's collective-bargaining relationship with the Union in the Detroit area began in 1943, when the Board certified the Union's predecessor as the exclusive bargaining representative in discrete units of store employees employed at the Employer's stores on Gratiot Avenue and Grand River Avenue in Detroit. In 1945, the Employer accorded the Union's predecessor exclusive recognition as representative of the Employer's full-time employees at its Highland Park store. This bargaining relationship has continued to the present, with the parties reaching a succession of multistore collective-bargaining agreements, the last of which was effective through March 21, 1976. Between 1970 and 1977, the Employer closed both its Gratiot Avenue and Grand River Avenue stores. In May 1976, the Regional Director issued separate Certifications of Representative, which certified the Union as the representative of part-time and certain previously unrepresented residual employees at the Highland Park and Grand River Avenue stores, respectively.

On December 2, 1975, following a Board-conducted election, the Union was certified as the representative of all full-time and regular part-time selling and nonselling employees employed by the Employer at its Lincoln Park, Michigan, store (including satellite locations in Wyandotte and Wayne, Michigan, which have subsequently been closed), and was recertified on July 25, 1977, after a decertification election.

In November 1976, after the Gratiot Avenue store closed but before the Grand River Avenue store closed, the Employer and the Union executed two collective-bargaining agreements. One contract, effective from March 23, 1976, through June 30, 1977, covered the previously represented Highland Park and Grand River Avenue employees, as well as the recently certified residual units at those locations. The other contract, effective from July 1, 1976, through June 30, 1977, covered the newly certified Lincoln Park unit. The parties held joint negotiating sessions for these two contracts, during which the Union advised the Employer that it desired one contract covering all three stores. The Employer demurred, stating that, while it was willing to hold joint negotiations to obviate duplication of negotiations, it wanted the separate contracts since it wanted to ascertain the effectiveness of certain provisions concerning newly represented employees. The Union acceded to the request for separate contracts with a common expiration date, but stated that it intended to next negotiate one contract covering all represented stores. The Employer made a noncommittal response to the Union's statement.

In 1977 the parties negotiated a single contract covering the Lincoln Park and Highland Park stores.[1] The Union's bargaining committee consisted of employee representatives from both stores, and the Union held single meetings with employees of both stores to draw up contract demands and to ratify the resulting contract. The recognition clause of the 1977 agreement lists, in series, each of the units covered by the agreement, based on the language in each of the certifications.[2] The contract

[1] The Employer closed its Grand River Avenue store prior to the commencement of these negotiations.

[2] Although the unit consisting of full-time employees of the Employer at the Highland Park store was recognized by the Employer in 1945, the *Continued*

applies equally to both stores, except that certain provisions apply specifically to only one unit.[3]

Petitioner seeks a decertification election in the Lincoln Park store. However, based on the above, the Regional Director concluded that the Lincoln Park and Highland Park units had been merged by the parties' conduct. The Regional Director found that the parties had a practice of melding separate units into a multistore unit, as demonstrated by the multistore contract for the Highland Park, Grand River Avenue, and Gratiot Avenue units and further shown by the incorporation of the Highland Park and Grand River Avenue residual unit, certified in 1976, into the existing unit. The Regional Director reasoned that, although the parties did not immediately merge the Lincoln Park unit with the existing Highland Park-Grand River Avenue unit, this merger was accomplished through the execution of the multistore agreement in 1977 and 3 years of unitary administration of that contract. He found that the parties' conduct outweighed testimony by employer representatives that they did not intend to merge the two units.

We find, contrary to the Regional Director, that an election should be directed in the Lincoln Park unit. In our view, the record does not contain "unmistakable evidence that the parties *mutually* agreed to extinguish the separateness of the previously recognized or certified units."[4] Initially, we note that the recognition clause contained in the 1977–80 Highland Park-Lincoln Park contract did not define the contract's coverage as one unit; rather, the clause listed separately each of the units that the contract covered, thereby indicating that the parties still recognized the units as being *separate* units.[5] The contract provided for no interstore seniority crossover rights for transfer, job bidding, or layoffs. The absence of such a provision leads us to the inference that, despite the negotiation of a single contract, the parties did not contemplate creating a single unit.[6] Nor do we find determinative the fact that the Union's negotiating team for the 1977 agreement contained employees of both stores, or that the agreement was ratified by a pooled vote of union members in both bargaining units. In our view, these factors are outweighed by the independent authority of each store manager in establishing personnel policies and developing employees' schedules, as well as the consideration of employees' grievances at the individual store level.[7] Where, as here, each store operates as a self-contained unit with no operational interchange between them, and in the absence of specific language to the contrary, we cannot draw the inference that the parties agreed to extinguish the existence of separate units.

Accordingly, having concluded that the Lincoln Park unit certified in 1975 and recertified in 1977 was not merged into the Highland Park unit, we find that the following employees of the Employer constitute a unit appropriate for the purposes of collective-bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time selling and non-selling employees employed by the Employer at its store located at 2100 Southfield, Lincoln Park, Michigan, including lead persons and check tracers, but excluding automotive center employees, concession and contractor employees, confidential employees, employees covered by existing collective bargaining agreements, guards and supervisors as defined in the Act.

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

contract indicates that the Highland Park employees are covered pursuant to the 1943 Gratiot Avenue-Grand River Avenue certifications.

[3] Contract provisions relating to the auto service center covers the Highland Park store only, as the Lincoln Park certification specifically excludes the auto service center. Also, provisions concerning Sunday work schedules differ, since the Lincoln Park store is open on all Sundays while the Highland Park store is open only 16 Sundays a year. In other respects, the contract applies virtually identically to both stores.11The Union's administration and servicing of the contract for the two stores is integrated. However, an issue pertaining to employees at only one store will be discussed only by employees at that store, unless the issue materially affects employees at both stores. The initial grievance steps are handled at the individual stores. Each store's manager and personnel department possesses wide discretion in setting personnel policy, without discussing it with the staff of the other store. There are no contractual interstore seniority crossover rights for transfer, job bidding, or layoffs. Each store has its own safety committee.

[4] *Utility Workers Union of America, AFL--CIO, and its Locals Nos. 111, 116, 138, 159, 264, 361, 426, 468, 478, and 492 (Ohio Power Company)*, 203 NLRB 230, 239 (1973), enfd. 490 F.2d 1383 (6th Cir. 1974).

[5] See *Lone Star Gas Company*, 194 NLRB 761 (1971); cf. *The Armstrong Rubber Company*, 208 NLRB 513 (1974).

[6] See *Bausch and Lomb Optical Company*, 107 NLRB 263, 265 (1953); *Continental Can Company, Inc., Plant 142, Plastic Container Division*, 145 NLRB 1427, 1429–30 (1964).

[7] See *Continental Can Company, supra*; *Metropolitan Life Insurance Company*, 172 NLRB 1257 (1968).