

Heck's, Inc.¹ and Phylis Carder, Petitioner, and Ricky Wayne Turley, Petitioner, and Retail Clerks Union, Local 1059, Retail Clerks International Association, AFL-CIO.² Cases 9-UD-123 and 9-UD-127

February 7, 1978

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS
PENELLO AND TRUESDALE

Upon petitions duly filed under Section 9(e)(1) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Earl L. Ledford of the National Labor Relations Board on November 21, 1977. Following the close of the hearing, and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Regional Director for Region 9 transferred this proceeding to the Board for decision. Thereafter, the Union 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. They are hereby affirmed.

Upon the entire record in this proceeding, including the Union's brief, the Board finds:

1. The Employer, Heck's, Inc., is a West Virginia corporation engaged in the retail sale of general merchandise at various retail outlets in several States. Its stores in Kanawha City, West Virginia, and Athens, Ohio, are the two locations involved in this proceeding. During the past 12 months, a representative period, the Employer purchased goods valued in excess of \$50,000 and caused said goods to be shipped directly in interstate commerce to its West Virginia facilities from points outside the State of West Virginia. During the same period, the Employer had gross revenues in excess of \$500,000. Accordingly, we find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

2. The labor organization involved claims to represent certain employees of the Employer.

¹ The Employer's name appears as amended at the hearing.

² The Union's name appears as amended at the hearing.

³ In view of our disposition herein, we find it unnecessary to pass on the Union's motion to dismiss the petition in Case 9-UD-123 because of the failure of the Petitioner to appear at the hearing.

⁴ These locations are as follows: Ashland, Kentucky; St. Albans, West Virginia; Point Pleasant, West Virginia; Kanawha City, West Virginia; Athens, Ohio; Wheeling, West Virginia; Fairmont, West Virginia;

3. The Petitioner in Case 9-UD-123 seeks a deauthorization election among the employees employed by the Employer at its Athens, Ohio, store. The Petitioner in Case 9-UD-127 seeks a deauthorization election among the employees employed by the Employer at its Kanawha City, West Virginia, store. For the reasons set forth below, we find that each petition is framed in a unit which is inappropriate for the purposes of a deauthorization election. Accordingly, we shall dismiss both petitions.³

In 1973, the Employer and the Union executed their first collective-bargaining agreement. This agreement covered a total of 15 stores and 1 warehouse, and included the 2 locations named in the instant petitions.⁴ With the exception of the Athens, Ohio, store, which was the subject of a Board certification issued on August 23, 1973, the Union became the bargaining agent of the employees employed at the stores covered by the contract as a result of voluntary recognition by the Employer.

Following the execution of the 1973 contract, unfair labor practice charges were filed against the Employer and the Union. In settlement of the cases, the Employer, the Union, the General Counsel of the National Labor Relations Board, and the Charging Parties entered into a stipulation providing for the entry of a consent order by the Board. On November 1, 1974, the Board issued a Decision and Order approving the parties' stipulation.⁵ The Board ordered the Employer to cease and desist from, *inter alia*, recognizing the Union as the exclusive bargaining representative of the employees at seven listed locations⁶ unless and until the Union had been certified by the Board as the representative of those employees or was the subject of a Board order directing the Employer to bargain with it. The Board also ordered the Employer to cease and desist from "maintaining and giving any force or effect" to the 1973 contract at the named locations. The Union was similarly ordered to cease and desist from implementing the agreement "at the locations listed." The Athens, Ohio, and Kanawha City, West Virginia, stores were not named in the Board's Order.

The effect of the Board's Order was to reduce the coverage of the 1973 contract to nine stores.⁷ The parties stipulated at the hearing that on December 11, 1974, in Case 9-UD-94, employees employed at seven of these nine stores voted in a deauthorization

Clarksburg, West Virginia; Bluefield, West Virginia; Russell, Kentucky; Winfield, West Virginia; Portsmouth, Ohio; Nitro, West Virginia (warehouse); Charleston, West Virginia; Morgantown, West Virginia; Heath, Ohio.

⁵ The Board's Decision and Order is not reported in NLRB volumes.

⁶ See the last seven locations listed in fn. 4, *supra*.

⁷ See the first nine locations listed in fn. 4, *supra*.

election which was directed by the Regional Director for Region 9.⁸ According to the Union's brief, each of the seven stores was treated as a separate voting group for the purposes of tabulating the ballots.

The parties' second collective-bargaining agreement is effective from August 1, 1976, until August 1, 1979. The contract states that it "covers the employees in the stores and warehouse set out in Appendix 1 of this Agreement." The recognition clause reads as follows:

The Employer recognizes the Union as the sole and exclusive collective bargaining agent for all full-time and part-time selling and non-selling employees employed by the Employer in the stores and warehouse set out in Appendix 1 of this Agreement, but excluding the store manager, warehouse manager, assistant store manager, assistant warehouse manager, department heads, casual employees, one confidential employee per store or warehouse, and all professional employees, guards and supervisory employees as defined by the Act.

Appendix 1 lists the nine stores referred to above that remained under the coverage of the 1973 agreement following the Board's Order of November 1, 1974. The record reveals that at the time the 1976 contract was executed the Employer and the Union agreed that the employees employed at a 10th store in Circleville, Ohio, would also be covered.

The 1976 contract by its terms provides for a uniform policy regarding union security, dues check-off, grievances, holidays, vacations, hours of work, seniority, wages, and other terms and conditions of employment at the covered locations. Furthermore, the record discloses that the contract has been

⁸ The two exceptions were the stores located in Ashland, Kentucky, and Point Pleasant, West Virginia. The Regional Director's decision directing the deauthorization election was not introduced into evidence and thus his underlying rationale does not appear in the record.

⁹ See *S. B. Rest. of Huntington, Inc. a wholly owned subsidiary of Steak and Brew, Inc.*, 223 NLRB 1445 (1976); *S. B. Rest. of Framingham, Inc. a wholly owned subsidiary of Steak and Brew, Inc.*, 221 NLRB 506 (1975).

interpreted and implemented in the same manner in all the stores. Thus, a grievance settlement in one store serves as a precedent in the resolution of a grievance arising in another store. Agreements reached by the Employer and the Union regarding policy questions arising under the contract are binding on all stores.

On the basis of the foregoing and the record as a whole, we find that the 10 locations covered by the 1976 agreement have been merged into a single unit.⁹ In making this determination, we rely particularly on the recognition clause of the 1976 contract as evidencing the parties' clear intent to create one overall unit. In our view, the consent order issued by the Board in the 1974 unfair labor practice proceeding does not compel a contrary result. Insofar as that Order can be construed as passing upon a unit question, it provided only that future recognition of the Union at seven locations that are not involved in this case must be on a store-by-store basis. Most importantly, the Board's Order issued prior to the execution of the 1976 contract and thus did not purport to decide the issue raised in this proceeding of whether that contract discloses a mutual intent to extinguish the separateness of the previously recognized or certified single-store units.¹⁰

Accordingly, as each petition seeks a deauthorization election limited to the employees employed at one location, dismissal is required because the units sought are not coextensive with the contractually defined multistore unit.¹¹

ORDER

It is hereby ordered that the petitions herein be, and they hereby are, dismissed.

¹⁰ For the same reason, we consider the 1974 direction of a deauthorization election by the Regional Director, apparently in reliance upon the Board's Order, to be entitled to little weight in resolving the question presented herein.

¹¹ *S. B. Rest. of Huntington, supra*; *S. B. Rest. of Framingham, supra*; *Hall-Scott, Inc.*, 120 NLRB 1364 (1958).