

In the Matter of ALBERT'S INCORPORATED, EMPLOYER and OFFICE EMPLOYEES INTERNATIONAL UNION, LOCAL No. 243, A. F. OF L., PETITIONER

Case No. 20-RC-720

AMENDED DECISION, ORDER, AND DIRECTION OF ELECTION

September 26, 1950

On June 6, 1950, the National Labor Relations Board issued a Decision and Order in the above-entitled proceeding, finding inappropriate the severance of a unit of office clerical employees at the Employer's Richmond, California, retail department store from a store-wide unit which the Board regarded as established by the bargaining history. Accordingly, the Board dismissed the petition herein.¹

On July 8, 1950, the Petitioner filed a motion, asking that the Board reconsider the said Decision and Order and alleging in substance (a) that its proposed unit of office clerical employees is a *prima facie* appropriate unit in the absence of bargaining history; (b) that there has been no bargaining history on a store-wide basis at the Employer's Richmond store; (c) that there was no established bargaining unit at the Richmond store when the instant petition was filed; and (d) that the only past bargaining history for these employees had been through a labor organization found by a Trial Examiner to be company-assisted. On July 31, 1950, the Intervenor² replied, opposing the granting of the Petitioner's motion. On August 4, 1950, the Petitioner requested leave to reply to the Intervenor. This request was denied on August 8, 1950.

As stated below, after the issuance of the original Decision and Order in this case, the Intervenor was found to have been unlawfully assisted by the Employer in violation of Section 8 (b) (2) of the Act. That fact, as well as certain other matters brought to the Board's attention by the Petitioner's motion, raise substantial issues which require our reconsideration of this case. We shall therefore vacate our

¹ 90 NLRB 110.

² Local 1179, Retail Clerks International Association, A. F. L.

Order of July 6, 1950, dismissing the instant petition, and order that the petition be reinstated.

Upon the basis of the entire record in this case, the Board makes the following:

AMENDED FINDINGS OF FACT AND CONCLUSIONS

The Employer operates department stores in Marin and Contra Costa Counties in California. Its Contra Costa County store, which includes an annex, is at Richmond, California, and is the only store involved in this proceeding.

In and after 1938, the Employer was a member of California Association of Employers and its two subassociations, Contra Costa Employers Council and Marin County Employers Council. From 1938 to 1948, the Employer and other employer-members of Contra Costa Employers Council recognized the Intervenor as the collective bargaining representative for all of their store employees "subject to" the latter's jurisdiction and entered into bargaining contracts for these employees. The parties to these contracts regarded the office clerical employees as falling within the scope of the contract unit, although it does not appear that during the period 1938-48 the Intervenor processed any grievances on behalf of any office clericals.

In November 1948, negotiations between Contra Costa Employers Council and the Intervenor broke down; since that date no contract has been negotiated on a multiemployer basis for these employees. On October 14, 1949, the Intervenor filed a petition for certification in Case No. 20-RC-700, alleging as appropriate its prior contract unit of office clerical and sales employees of employer-members of Contra Costa Employers Council, including the Employer. On or before October 26, the Employer withdrew from Contra Costa Employers Council and, on October 27, signed a proposed contract with the Intervenor covering employees at the Employer's Richmond store.³ This contract contained an illegal union-security clause. On the same day, the Petitioner filed the instant petition seeking a unit of office clerical employees at the Employer's Richmond store.⁴

On August 1, 1950, following the issuance of a complaint upon charges filed by the Petitioner based on the afore-mentioned union-security provision and a hearing had, the Board issued its Decision and Order in Cases Nos. 20-CA-320 and 20-CB-105,⁵ finding, *inter*

³ On November 28, 1948, the Intervenor withdrew its petition in Case No. 20-RC-700.

⁴ This proposed contract was not immediately signed by the Intervenor, but was to be signed later and submitted to the Intervenor's membership for approval. The instant record does not disclose the date when the contract was signed by the Intervenor and submitted and approved by the membership.

⁵ (Unpublished.) The Board adopted the findings and conclusions of the Trial Examiner, in the absence of exceptions to the Intermediate Report.

alia, that, by executing a contract with the Intervenor containing an illegal union-security clause, the Employer herein had unlawfully assisted the Intervenor, in violation of Section 8 (a) (1) and (2) of the Act. The Board accordingly ordered the Employer to withdraw recognition from the Intervenor as bargaining representative of employees at the Employer's Richmond store until the Intervenor should be certified by the Board.

As set forth in our original decision, the office clericals at the Employer's Richmond store constitute a homogeneous group such as we have found may constitute an appropriate bargaining unit, absent a history of collective bargaining on a broader basis.⁶ In that decision, however, we concluded that the history of bargaining with the Intervenor on a store-wide basis rendered inappropriate a unit confined to the office clericals. But that conclusion is no longer warranted, in view of the fact that the Employer has been found to have extended illegal assistance to the Intervenor. It has long been the policy of the Board not to predicate a unit finding on the collective bargaining experience of a union found to have been illegally assisted by the Employer.⁷ That principle is applicable here, and we therefore find that there is no bargaining history which precludes the establishment of a unit of office clericals at this time.

Accordingly, upon the basis of the above amended findings of fact and the entire record in this case, we reach the following conclusions:

1. We find that a question affecting commerce exists concerning the representation of the employees of the Employer, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

2. We find that all office clerical employees at the Employer's Richmond store,⁸ excluding sales and other employees and supervisors, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

ORDER

IT IS HEREBY ORDERED that the Order dismissing the petition in this case be, and it hereby is, vacated.

[Text of Direction of Election omitted from publication in this volume.]

MEMBERS REYNOLDS and MURDOCK took no part in the consideration of the above Amended Decision, Order, and Direction of Election.

⁶ *Maas Brothers, Inc.*, 88 NLRB 129; *Meier & Frank Company*, 86 NLRB 517.

⁷ See *Pacific Telephone and Telegraph Company*, 80 NLRB 107, and cases cited therein.

⁸ These employees include billers, bookkeepers, cashiers, payroll clerks, invoice clerks, credit interviewers, and secretary clerks.