grocery stores, in all of our stores within a radius of 25 miles of Washington, D. C., including all grocery clerks, produce clerks, dairy clerks, cashiers, porters, receiving clerks, and baggers, but excluding meat department employees, drivers, warehousemen, guards, watchmen, office clerical employees, and supervisors as defined in the Act.

WE WILL NOT in any manner interfere with the efforts of the above-named Union to bargain collectively with us, or refuse to bargain with said Union, as the exclusive representative of the employees in the bargaining unit set forth above.

SHIRLINGTON SUPERMARKET, INC., and Its Subsidiaries, SHIRLEY FOOD STORE NO. 1, INC., SHIRLEY FOOD STORE NO. 2, INC., SHIRLEY FOOD STORE NO. 5, INC., SHIRLEY FOOD STORE NO. 6, INC., and WESTMONT SUPERMARKET, INC.,

Employer.

Dated ..... By.....
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date hereof, and must not be altered, defaced, or covered by any other material.

MICHAEL SILVERS, d/b/a SILVERS SPORTSWEAR, Petitioner *and* INTERNATIONAL LADIES GARMENT WORKERS UNION, LOCAL 266, AFL; LOS ANGELES SPORTSWEAR JOINT COUNCIL; I.L.G.W.U., AFL; GARMENT SHIPPING & RECEIVING CLERKS, WAREHOUSEMEN, DRIVERS & HELPERS, LOCAL No. 994.[1] Case No. 21-RM-267. April 29, 1954

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Fred W. Davis and Irving Helbling,[2] hearing officers. The hearing officers'

[1] The names of the participating unions, herein referred to collectively as the "Union," appear as set forth in the amended petition and as modified at the hearing.

[2] Hearing Officer Davis sat at the first day of the hearing; Hearing Officer Helbling completed the hearing and issued the hearing officer's report.

rulings made at the hearing are free from prejudicial error and are hereby affirmed.[3]

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

1. During the year 1952, the Employer, who operates a contracting plant in the ladies sportswear industry in the city of Los Angeles, California, manufactured or processed $93,000 worth of merchandise for various manufacturers of ladies sportswear. Of this amount, $56,000 worth of garments were processed for Hollywood Casuals, a manufacturing firm also located in Los Angeles and which, during the same year, shipped over $25,000 worth of merchandise directly to points outside the State of California. The Union contends that although the Employer's business for 1952, the last full calendar year prior to the filing of the petition herein, may have satisfied the Board's jurisdictional requirements,[4] the 1952 figures are not representative of the Employer's current operations because of an alleged loss of business. Thus, the Union alleges that after April 1953, when the Employer withdrew from the California Apparel Contractor's Association, a multi-employer collective-bargaining group, and commenced operating a nonunion shop, the Employer lost the business of Hollywood Casuals which, together with other members of the Association, were under contract with the Union not to do business with a nonunion contractor.

Without deciding the extent to which the Employer's business suffered by reason of his withdrawal from the Association, we will assert jurisdiction herein on the basis of the Employer's 1952 operations because we do not feel that any temporary loss of business warrants a refusal to assert jurisdiction where, as here, it is adequately demonstrated that the Employer's normal business operations satisfy the present jurisdictional standards.[5] In the case at bar, it is clear that the Employer employed as many persons at the time of the hearing as he did when he was a member of the Association and there is no basis for concluding that the change from a union-shop to a nonunion-shop operation will have a substantial and permanent adverse effect on the Employer's business.[6]

Accordingly 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.[7]

---

[3] The hearing officer reserved for the Board's disposition a motion by the Joint Council to dismiss as to it because its name was not included in the title of this proceeding in the papers preceding the notice of hearing and in the notice of hearing. We overrule this motion inasmuch as the Joint Council was properly made a party by the filing of the amended petition and was served with timely notice of hearing.

[4] Hollow Tree Lumber Company, 91 NLRB 685.

[5] See Owensboro Plating Company, 103 NLRB 993; Palace Knitwear Co., Inc., 93 NLRB 872.

[6] Accordingly we affirm the ruling of the hearing officer by which he quashed the Union's subpena for the production of the Employer's books and records.

[7] Although Chairman Farmer and Member Rodgers join in this decision, they are not to be deemed thereby as agreeing with the Board's past jurisdictional standards as a permanent policy.

2. The labor organizations involved claim to represent certain employees of the Employer.

3. The Union contends that no question concerning representation exists because it did not request the Employer to recognize it as the majority representative of any particular unit of the Employer's employees, but rather that the demand that was made upon the Employer was limited to a request by the Union for a members-only contract. However, it is apparent that for some years prior to the Employer's withdrawal from the Association, the Union represented all of his employees and that there existed a union-shop contract to which the Union and the Employer, as an Association member, were parties. In the light of this bargaining history and in the light of the additional facts that the Union was actively picketing the Employer's plant as of the date of the petition and hearing herein, and because the Union normally represents all of the classifications of employees found in the Employer's plant, we are persuaded that a demand was made upon the Employer for recognition of the Union as the majority representative of the employees of the Employer in the unit hereinafter found appropriate.

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

4. Although both of the parties agree as to the classification of employees to be included in the unit found appropriate, they disagree as to the scope of the unit. The Employer contends that his resignation from the Association renders appropriate only a single-employer unit, whereas the Union contends that the only appropriate unit is one including the employees of the Employer and of all of the members of the Association. We find no merit to the Union's contentions because the Employer's withdrawal from the Association was both timely and effective[8] so as to remove him from the multiemployer unit.

Accordingly we find that the following employees of the Employer at the Employer's Los Angeles, California, plant constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All production and shipping and receiving department employees excluding office clerical employees, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

Member Beeson took no part in the consideration of the above Decision and Direction of Election.

[8] Cf. Economy Shade Company, 91 NLRB 1552; Everett Auto Company, 107 NLRB 1449.