Date	Total production and maintenance employees working at—644 E. Bay St and 1000 E Bay St. yards (Old M/S Yards)	2000 E. Bay St., Green Cove Springs and Mayport (Old Rawls Yards)
3- 5-61	156	
3- 6-61	274	89
3- 7-61	390	87
3- 8-61	415	87
3- 9-61	410	119
3-10-61	410	119
3-11-61	227	5
Weekly avg. total	326	101
3-12-61	171	11
3-13-61	376	92
3-14-61	379	111
3-15-61	374	119
3-16-61	380	108
3-17-61	390	84
3-18-61	156	2
Weekly avg. total	318	105
3-19-61	61	8
3-20-61	319	56
3-21-61	416	44
3-22-61	429	43
3-23-61	412	44
3-24-61	336	37
3-25-61	55	2
Weekly avg. total	290	46
3-26-61	14	1
3-27-61	81	34
3-28-61	67	50
3-29-61	69	38
3-30-61	192	33
3-31-61	127	27
Weekly avg. total	110	37

International Restaurant Associates for and on behalf of its members Nibblers Crenshaw, Inc. and La Maria Corp. d/b/a Lococo's Restaurant,[1] Petitioner *and* Culinary Workers and Bartenders Union, Local 814, affiliated with Hotel & Restaurant Employees International Alliance, AFL-CIO.[2] *Case No. 21-RM-730. October 16, 1961*

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 Virginia M. McElroy, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman McCulloch and Members Fanning and Brown].

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

1. The Employer is engaged in commerce within the meaning of the Act.[3]

[1] The name of the Employer-Petitioner appears as amended at the hearing.

[2] The name of the Union appears as amended at the hearing.

[3] On the basis of our unit finding herein, we find that the companies named above, who have been signatory parties to a multiemployer contract since 1958, constitute a single employer for jurisdictional purposes. The combined gross volume of business of these companies exceeds $500,000, and their combined purchases from suppliers who obtain such supplies from outside the State of California exceeds $50,000. Under these circumstances, we find that the Employer is engaged in commerce and that it will effectuate the policies of the Act to assert jurisdiction herein. *Atlas Shower Door Co., et al*, 131 NLRB 96.

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

3. 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. Petitioner, International Restaurant Associates, herein called IRA, seeks an election in a unit consisting of employees of its members, Nibblers Crenshaw, Inc., herein called Nibblers, and La Maria Corp. d/b/a Lococo's Restaurant, herein called Lococo's. IRA was organized in August 1955 by a group of restaurant owners in the vicinity of the Los Angeles, California, International Airport, for the purpose, *inter alia*, of handling employer-employee relations for its members. At least since 1958, IRA has so represented its members. In 1958, IRA, then consisting of 13 restaurants, hired Ed Gund as labor relations consultant to negotiate concerning a collective-bargaining agreement with the Union. On September 29, 1958, IRA and the Union entered into a 3-year contract effective from August 1, 1958, until August 1, 1961. This contract, signed by the secretary-treasurer of Ira for and on behalf of its members and by the members individually contained a clause providing for annual reopening of the wage section by either party for negotiations.

In June 1959 the wage section was reopened, and IRA, then comprised of 10 restaurants, and the Union negotiated a memorandum agreement addendum to the 1958 contract which was executed on November 25, 1959, by IRA on behalf of its members. In October 1960 IRA and the Union again commenced negotiations pursuant to the wage reopener clause of the contract. By January 1961 the parties had reached an impasse in bargaining, and on January 13 IRA advised the Union that the IRA members had rejected the Union's latest proposal.

On January 14 the Union commenced picketing at the premises of two IRA members, Hyatt House, beginning about 6:30 a.m., and the Cockatoo Restaurant, beginning about 8:30 a.m. Hyatt House and the Cockatoo Restaurant, as well as three other IRA members, capitulated to the Union's demands on that date, and by January 16 all the other members of IRA, except Nibblers and Lococo's, had reached a settlement by signing a memorandum agreement. Each of these employers was approached individually by the Union and each signed separately from the others, although all affixed their signatures to a single document. This document bore the name of IRA but was not signed by its representative. On January 16 picket lines were established at the premises of Nibblers and Lococo's and were being maintained at the time of the hearing.

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During the period January 18 to April 11, each of the eight IRA members who had signed with the Union submitted a letter of withdrawal to IRA. Neither Nibblers nor Lococo's did so but, rather, they continued bargaining with the Union. On March 24, and again on May 2, their representatives and the Union's representatives met with a Federal conciliator at his office to discuss proposals for settlement of issues between the parties. At these meetings IRA was represented by essentially the same bargaining team as in negotiations before January 16. Neither party gave any indication that these negotiations were on anything but a joint basis.

On May 23, 1961, the IRA filed the petition herein on behalf of Nibblers and Lococo's. The Union contends that the petition is for an inappropriate unit, asserting that these two employees are no longer members of IRA and that the association unit now consists of the eight employers who signed the 1961 memorandum agreement. Alternatively, it contends that the IRA still consists of the 10 members and the scope of the unit has not changed. We do not agree with either of these contentions.

In our opinion, the conclusion which follows from the foregoing evidence is that the IRA now consists of the two named members and that the eight employers who signed the memorandum agreement in January effectively abandoned the multiemployer bargaining unit upon insistence of the Union, thereby establishing single-employer units of the employees of each.[4] By picketing the members of IRA separately and requesting that each settle the dispute by signing the agreement individually, the Union acted in derogation of the existence of a binding multiemployer unit and manifested its desire to bargain on an individual basis. The eight employers who settled the dispute by executing that agreement thereby acceded to the Union's wishes. The fact that the agreement which they signed consists of a single document is immaterial, as the record clearly indicates that the signing of that agreement was the result of individual rather than group bargaining,[5] and the IRA did not execute the agreement. Moreover, Cockatoo Restaurant filed a petition with the Board which was later withdrawn, and Cockatoo and the Union thereafter entered into separate negotiations and executed an agreement effective from June 5, 1961, to August 1, 1962. By this conduct they have indicated their understanding that the multiemployer unit has ceased to exist, at least as to Cockatoo, thus substantiating our conclusions as to the effect of the individual settlements. Finally, IRA, when notified by

[4] See *Neville Foundry Company, Inc.*, 122 NLRB 1187.

[5] The record is devoid of any indication that these employers felt impelled to or did in fact discuss the Union's demand with the others before signing the agreement.

the eight employers of their withdrawals, made no objection thereto and, in fact, acquiesced in the action, as evidenced by its filing of the petition herein on behalf of its remaining members. The Union's contentions as to the scope of the multiemployer unit are therefore rejected.

The Union further contends that, if the Board should find that Nibblers and Lococo's presently constitute an appropriate multiemployer unit, the petition herein should be dismissed as the Union has never sought to represent a unit so comprised. We find no merit to this contention for the following reasons: After the eight members withdrew from the IRA, the Union met on two occasions with Nibblers and Lococo's. As set forth above, these employers were jointly represented by essentially the same bargaining team which had represented the IRA in previous negotiations. The Union's demands were uniform and applied equally to both employers, and at no time prior to the filing of the petition did the Union express any desire to bargain separately with these employers, or indicate that it was not bargaining with them jointly.[6] We find, therefore, that the Union's conduct at these bargaining sessions constituted a demand for recognition in a unit comprised of both employers, that such demand was never withdrawn,[7] and that, in fact, at the time of the hearing the demand was continuing. We therefore deny the Union's motion to dismiss the petition on this ground.[8]

On the basis of the foregoing, we find that Nibblers and Lococo's are the only remaining members of IRA and, as such, continue to constitute an appropriate multiemployer group.

Accordingly, we find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:[9]

All kitchen, dining room, and bar employees, including chefs, cooks, waiters, waitresses, cashiers, hostesses, bartenders, barboys, busboys, dishwashers, and miscellaneous kitchen employees, employed by the employer-members of International Restaurant Associates (Nibblers Crenshaw, Inc., 9833 Crenshaw Boulevard, Inglewood, California, and La Maria Corp. d/b/a Lococo's Restaurant, 618 South Sepulveda Boulevard, Manhattan Beach, California), excluding office clerical employees, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

[6] Cf. *Neville Foundry Company, Inc., supra,* at pp. 1189–1190

[7] Cf. *Miratti's, Inc.,* 132 NLRB 699.

[8] See *Michael Silvers, d/b/a Silvers Sportswear,* 108 NLRB 588, 590; *Standard Furniture Company,* 118 NLRB 35, 36

[9] The parties are in agreement as to the composition of the unit.