

bargaining purposes. We shall, accordingly, amend our original Decision herein.³

IT IS HEREBY ORDERED that the original decision herein be, and it hereby is, amended to read as follows:

The following employees of the Employer constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees employed by Dun Rite Polishing, Buffing and Plating Corporation at 5800 Russell Street plant, Detroit, Michigan, excluding office clerical and plant clerical employees, guards, professional employees, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

MEMBERS RODGERS and LEEDOM took no part in the consideration of the above Decision and Direction of Election.

³ See *Georgia Creosoting Corporation*, 133 NLRB 349. As appears from the original decision, the assertion of jurisdiction over Dun Rite is plainly warranted.

Goldeen's, Inc. and Judson W. Whitmore, Petitioner and Retail Store Employees Union, Local No. 428, Retail Clerks International Association, AFL-CIO

Martino's Complete Home Furnishings and Martino's Budget Store¹ and Wave Helm, Petitioner and Retail Store Employees Union, Local No. 428, Retail Clerks International Association, AFL-CIO

L. Lion & Sons Company, Inc., and Lion's Exchange Store² and Melda Maitoza, Petitioner and Retail Store Employees Union, Local No. 428, Retail Clerks International Association, AFL-CIO

Gryder-Kuykendall, Inc. and Loren N. Hyland, Ruby Allen, Mildred Flood, Virginia Terry and John S. Adams, Petitioners and Retail Store Employees Union, Local No. 428, Retail Clerks International Association, AFL-CIO

Elroy H. Shank, A. L. Abrott, Warren D. Reilly and Charles Robinson, Co-Partners, d/b/a Robinson & Sons Co. and Carolyn A. Mikesell, Petitioner and Retail Store Employees Union, Local No. 428, Retail Clerks International Association, AFL-CIO

¹ Petition was amended at the hearing to include both stores.

² Petition was amended at the hearing to include both stores

Union Furniture Co., Ltd. (Mountain View, California, Store) and Arthur Donald Soper, Petitioner and Retail Store Employees Union, Local No. 428, Retail Clerks International Association, AFL-CIO

Warren B. Reilly, Elroy H. Shank, Charles Robinson, William Fenton and Glenn Jones, Co-Partners d/b/a Jones-Fenton Furniture Co., and The Bargain Spot and Jack Fear, Petitioner and Retail Store Employees Union, Local No. 428, Retail Clerks International Association, AFL-CIO

William J., Wilford J., Robert F., and Irma Scilacci, Edwina Adoradio and Donna Napala, Co-Partners d/b/a Smilin' Bill's Furniture Company and Madeline Atkinson, Petitioner and Retail Store Employees Union, Local No. 428, Retail Clerks International Association, AFL-CIO

San Jose Furniture Retailers Association, California Association of Employers, and Goldeen's Inc., Goldeen's Economy Furniture Co., Martino's Complete Home Furnishings and Martino's Budget Store, L. Lion & Sons Company, Inc., and Lion's Exchange Store, Gryder-Kuykendall, Inc., Elroy H. Shank, A. L. Abrott, Warren D. Reilly and Charles Robinson d/b/a Robinson & Sons Co., Union Furniture Co., Ltd. (Mountain View, California, Store), Warren B. Reilly, Elroy H. Shank, Charles Robinson, William Fenton and Glenn Jones, d/b/a Jones-Fenton Furniture Co., and The Bargain Spot, William J., Wilford J., Robert F., and Irma Scilacci, Edwina Adoradio and Donna Napala, d/b/a Smilin' Bill's Furniture Company, Franz J. Niederauer, Inc., d/b/a Western Appliance Co., Simoni's Home Furnishings, Peter J. Allen Corporation d/b/a Allen's Furniture, Union Furniture Co., Ltd. (San Jose, California, Store), Great Western Furniture Co., Inc., and Lachman Bros. and Retail Store Employees Union, Local No. 428, Retail Clerks International Association, AFL-CIO, Petitioner. *Cases Nos. 20-RD-265, 20-RD-267, 20-RD-268, 20-RD-269, 20-RD-270, 20-RD-271, 20-RD-272, 20-RD-273, and 20-RC-4638. November 27, 1961*

DECISION AND ORDER

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act,³ a hearing was held before Robert V. Magor, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

³ By Order of the Regional Director for the Twentieth Region, dated June 7, 1961, the above-captioned cases were consolidated.

Upon the entire record in this case, the Board⁴ finds:

1. The Employers are engaged in commerce within the meaning of the Act.⁵

2. The labor organization involved claims to represent certain employees of the Employers.⁶

3. No question affecting commerce exists concerning the representation of employees of the Employers within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act, for the following reasons:

In February 1957, a number of the Employers involved herein formed a multiemployer association known as the Retail Furniture Council of Santa Clara County, hereinafter called Council.⁷ The members of Council executed written authorizations to one Edward H. Moore, an attorney, which gave Moore the power to represent the members of Council in collective-bargaining negotiations. On April 1, 1957, Moore, on behalf of Council, entered into a collective-bargaining agreement with the Retail Store Employees Union, Local No. 428, Retail Clerks International Association, AFL-CIO, hereinafter called the Union, which was effective to July 1, 1960, and contained an annual reopening provision.

In April 1958, the Union gave notice to Moore and the members of Council of its desire to amend the contract. On August 6, 1958, while negotiations were being conducted, Western Appliance Company notified Council, by letter, that it was withdrawing therefrom. Pursuant to the negotiations, Moore, on behalf of Council, entered into a new contract with the Union in January 1959, effective to July 30, 1961.⁸ This agreement also contained an annual reopening provision.

In August 1959, pursuant to the reopening provisions, the 1958 contract was reopened for negotiations concerning a health and welfare plan. On November 23, 1959, while negotiations were being conducted, Goldeen's, Inc., and Goldeen's Economy withdraw from Council, and revoked, in writing, the authorization previously given to Moore.

⁴ Member Brown did not participate in the consideration of this matter.

⁵ In view of our Decision herein dismissing all the petitions, we do not pass upon the question of whether Gryder-Kuykendall and Jones-Fenton are engaged in commerce within the meaning of the Act.

⁶ The Union claims to represent the employees of all the Employers involved herein in a multiemployer unit. The Petitioners in the decertification cases assert that the Union is no longer the bargaining representative of the employees as defined in Section 9(a) of the Act, and allege that only single employer units are appropriate.

⁷ The original members of Council with a few exceptions not pertinent to this Decision were Allen's, Goldeen's, Inc., Goldeen's Economy, Jones-Fenton, L. Lion & Sons, Martino's, Robinson's, Simon's, Smilin' Bill's, Union Furniture, Western Appliance, and Lachman Brothers. Retail Furniture Council of Santa Clara County is sometimes erroneously referred to as San Jose Furniture Retailers Assoc., and Retail Furniture Council of San Jose.

⁸ The contract was executed on behalf of those Employers listed in footnote 7 with the exception of Western Appliance, and with the addition of Gryder-Kuykendall and Great Western, which had joined Council since the execution of the 1957 contract. Smilin' Bill's is not listed as a party to the new contract but this appears to have been an oversight.

Thereafter, Moore notified the Union, by letter, that his authority to represent these two firms had been terminated. In December 1959, Great Western Furniture Company telephoned Moore to notify him that it was canceling his authority to represent them. Although Moore did not notify the Union of Great Western's withdrawal, Great Western was not thereafter involved in any of Council's contractual dealings with the Union.

Sometime in January 1960, the parties concluded an amendment concerning the health and welfare plan. On March 10, 1960, the Council members decided to terminate their relationship with Moore, and, on that date, they executed written authorizations to, and joined, the California Association of Employers, a large multiemployer association, hereinafter called CAE.⁹

Goldeen's, Inc., and Goldeen's Economy which had withdrawn from Council in November 1959, joined CAE on February 24, 1960. At that time, and again on March 10, 1960, Goldeen's, Inc., and Goldeen's Economy executed written authorizations giving CAE the power to represent them in all collective-bargaining matters. Also on March 10, 1960, Council accepted the resignation of Lachman Brothers, which had objected to being represented by CAE. On March 14, 1960, Lachman Brothers notified the Union that it was no longer represented by Council. Lachman never became a member of CAE and all subsequent dealings were directly between it and the Union. On March 18, 1960, Moore finally informed the Union that he no longer represented Council, and that his authority to act for that organization had been revoked.

On May 26, 1960, the Union notified CAE of its desire to reopen the 1958 contract. Negotiations followed and on July 28, 1960, CAE and the Union executed an amendment to the 1958 contract.¹⁰

On December 15, 1960, a consent UD election was held among the employees of the Employers listed in footnote 10, as well as Lachman Brothers and Great Western Furniture Co. The consent-election agreement was executed by the Union and CAE, on behalf of Council, which included all of the employers involved herein with the exception of Lachman and Great Western, who signed individually on their own behalf. Western Appliance was not involved in the UD proceeding at all. A majority of the employees voted against withdrawal of the Union's authority to enter into a union-security agreement.

On March 30, 1961, the members of Council voted to dissolve their organization. These Employers thereafter informed CAE by letters

⁹ Although the Council members, with the exceptions hereafter noted, joined CAE, it is clear from the record and actions hereinafter set forth, that Council continued to exist as a body within CAE, and that CAE was merely substituted for Moore as the bargaining representative of Council.

¹⁰ The agreement was executed by CAE for Allen's, Goldeen's, Inc., Goldeen's Economy, Jones-Fenton, L. Lion, Martino's, Robinson's, Smilin' Bill's, Siment's, Union Furniture, and Gryder-Kuykendall.

of their action, stating that they had dissolved Council and that they now wished to be represented by CAE on an "individual store basis." On April 6, 1961, an amendment to the 1958 contract was executed by CAE, on behalf of the Employer members, and the Union.¹¹ On April 11, 1961, Lachman Brothers and Great Western Furniture Company executed separate agreements with the Union amending the 1958 contract to which each had remained a party. On April 21, 1961, Western Appliance Company joined CAE. Subsequently, a separate amendment to the 1958 contract was entered into between the Union and Western Appliance, with CAE presumably acting on behalf of this Employer.¹²

On April 28, 1961, the first decertification petition was filed naming Goldeen's, Inc., as the Employer. On May 2, 1961, CAE notified the Union, apparently for the first time, that Council had dissolved and that the members now wished CAE to represent them individually. On May 16, 1961, private counsel representing Goldeen's, Inc., and Goldeen's Economy notified the Union, by letter, of their intention to terminate the 1958 agreement which was due to expire on July 31, 1961. On May 24, 1961, Goldeen's, Inc., and Goldeen's Economy, by written notice, withdrew the authorization previously given to CAE.

On May 25 and 26, 1961, CAE notified the Union, by separate letters, on behalf of each individual employer, of their desire to terminate the contract at the expiration of the present term. On May 26, 1961, the Union filed its RC petition requesting an election in a multiemployer unit.

The Union contends that a multiemployer unit is appropriate and that all the decertification petitions should be dismissed. The Employers take the position that only the single employer units are appropriate and that the Union's petition should be dismissed.

As previously noted, Great Western and Lachman Brothers terminated their relationship with Council in December 1959 and March 1960, respectively, and neither Employer has since engaged in any multiemployer bargaining. Each of them has executed separate, individual contracts with the Union. In these circumstances, we find that Great Western and Lachman Brothers effectively withdrew from the then existing multiemployer association.¹³

¹¹ It appears that the negotiations were concluded March 29, 1961, the day before Council voted to dissolve. The negotiated amendment was not executed until April 6, 1961, effective as of April 1, 1961. The amendment signed by CAE listed its employer members by name and those so named are the same Employers who were members of Council. Lachman and Great Western were not included.

¹² On April 21, 1961, the day Western Appliance joined CAE, CAE notified the Union that it would now be representing Western Appliance. The Union inquired whether Western Appliance would automatically become a party to the recently negotiated agreement. (Presumably the amendment of April 6, 1961.) CAE replied in the negative and stated that "any negotiations or procedures relative to the firm will be handled on an individual basis and any decisions entered into by us on their behalf will be confined solely to the Western Appliance Company."

¹³ *Scougal Rubber Mfg. Co., Inc., et al.*, 126 NLRB 470.

As to Western Appliance, it appears that it withdrew from Council in August 1958 and joined CAE in April 1961. Thereafter CAE bargained for it separately, not as part of the then existing multi-employer bargaining group. As Western Appliance has shown an unequivocal intent *not* to be part of any multiemployer bargaining unit, we exclude it from the requested multiemployer unit.¹⁴

With respect to the remaining Employers, all of whom were members of Council and CAE, we find that by their act of disbanding Council on March 30, 1961, their subsequent letters to CAE indicating that they now wished to be represented individually rather than as a group, and CAE's notice to the Union of the above action, an unequivocal intent to abandon multiemployer bargaining, was clearly established and communicated to the Union. As such action was timely taken, we find that there is no longer in existence the multi-employer unit sought by the Union in its petition in Case No. 20-RC-4638, and we shall, accordingly, dismiss the petition therein.

Each of the several decertification petitions filed herein seeks an election in a single-employer unit consisting of the employees of each Employer which previously belonged to the multiemployer unit. In view of the foregoing finding as to the timely withdrawal from, and abandonment of, the multiemployer unit, we further find that each of the Employers, individually constitutes a unit appropriate for bargaining. However, it is well-established Board policy that a decertification election will be directed only in the certified or currently recognized bargaining unit.¹⁵ As the Union is not certified and, as will appear hereafter, we find that the single-employer units as alleged in the decertification petitions are not the currently recognized units, consistent with settled policy we shall dismiss the remaining petitions.

It is axiomatic that the concept of a currently recognized unit is based upon the existence of a collective-bargaining relationship, and requires agreement between the parties, either express or implied, as to the unit of employees affected by that relationship. Where, as in the instant matter, there is no outstanding Board certification upon which the Board can rely in determining the scope of the unit, the Board will look to evidence of the parties' bargaining history to determine which unit the parties have, in fact, recognized.¹⁶

In the instant case, it is clear that until the dissolution of Council and the Union's receipt of notice thereof, the recognized bargaining unit was the multiemployer unit. Thereafter, based upon the Employers' newly executed authorizations to CAE, all further negotia-

¹⁴ *Earl Gordon d/b/a Gordon Electric Company*, 123 NLRB 862.

¹⁵ *Calorator Manufacturing Corp.*, 129 NLRB 704, footnote 3, *The Root Dry Goods Co., Inc.*, 126 NLRB 953, 954 at footnote 6, *Harry F. Shuey and Marion M. Shuey, d/b/a Oakwood Tool and Engineering Company*, 122 NLRB 812, 814.

¹⁶ *Calorator Manufacturing Corp.*, 129 NLRB 704, footnote 3.

tions between the Union and the Employers were to be through the latter's agent, CAE—but on an individual rather than a group basis. The record herein is completely devoid of any evidence of dealings between the parties since the dissolution of the multiemployer unit, and there is no basis for assuming that the Union is willing to accept current recognition in the several single employer units. Indeed, the latter assumption is belied by the Union's petition in Case No. 20-RC-4638, and its position in the instant decertification proceedings, namely, that any but the multiemployer unit is inappropriate. In these circumstances, where the record discloses that since the dissolution of the previous multiemployer unit the parties have disagreed as to the unit to be recognized, we are unable to say that the single employer units alleged in the decertification petitions are the currently recognized units.

Accordingly, as there is no longer an existing bargaining unit in which the Union is currently recognized, we shall dismiss all of the decertification petitions filed herein.

[The Board dismissed the petitions filed in Cases Nos. 20-RD-265, 20-RD-267, 20-RD-268, 20-RD-269, 20-RD-270, 20-RD-271, 20-RD-272, 20-RD-273, and 20-RC-4638.]

Local 347, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America [D. L. Harrison Company] and Eugene Warner, Kenneth Burgess, Charles Hickey, Albert C. Kramer, Raymond W. Craft, Buford C. Kinder, Dwight Taylor, James C. Turner, Hobart Holloway, Alfred Leroy Walker, Theodore Watson, John Petty, and Robert Scheper. *Cases Nos. 14-CB-883-1 through 14-CB-883-13. November 28, 1961*

DECISION AND ORDER

On July 3, 1961, Trial Examiner John H. Eadie issued his Intermediate Report herein, finding that the Respondent had engaged in unfair labor practices in violation of Section 8(b)(1)(A) and (2) of the Act and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a brief in support thereof.

The Board¹ has reviewed the Trial Examiner's rulings and finds no prejudicial error. The rulings are hereby affirmed. The Board

¹ Pursuant to Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Rodgers, Leedom, and Brown].