

Bab-Rand Company, Petitioner and Los Angeles Joint Executive Board of the Hotel and Restaurant Employees and Bartenders Union, AFL-CIO and Retail Clerks Union Local 770, Chartered by the Retail Clerks International Association, AFL-CIO

Bab-Rand Company, Petitioner and Hotel, Motel and Restaurant Employees and Bartenders Union, Local 694, AFL-CIO and Retail Clerks Union Local 770, Chartered by the Retail Clerks International Association, AFL-CIO

Bab-Rand Company and Los Angeles Joint Executive Board of the Hotel and Restaurant Employees and Bartenders Union, AFL-CIO, Petitioner

Bab-Rand Company and Hotel, Motel and Restaurant Employees and Bartenders Union, Local 694, AFL-CIO, Petitioner. Cases Nos. 21-RM-973, 21-RM-974, 21-RC-8719, 21-RC-8720, and 21-RC-8721. June 3, 1964

DECISION AND DIRECTION OF ELECTIONS

Upon separate petitions duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Hearing Officer Barton W. Robertson of the National Labor Relations Board.¹ 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 these cases to a three-member panel [Chairman McCulloch and Members Leedom and Fanning].

Upon the entire record in these cases, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.²
2. The labor organizations involved claim to represent certain employees of the Employer.
3. Questions affecting commerce exist concerning the representation of certain employees of the Employer within the meaning of Section 9(c) (1) and Section 2(6) and (7) of the Act.

¹ The petition and other formal papers were amended at the hearing to show the correct names of the labor organizations involved in this proceeding.

² We find no merit in Local 770's contention that "the record does not establish the fact that the employer [a retail establishment] meets the commerce standards as required by the Board." The record shows that the Employer's gross volume of business is in excess of \$500,000.

White Front Stores, Inc., herein called White Front, is a discount department store chain engaged in retail selling. The Employer, Bab-Rand Company, operates retail snackbars on a leased department basis in several White Front Stores in the Los Angeles area. At the time of the hearing, the Employer operated six snackbars in White Front stores.³ Only the operations at Canoga Park, West Jefferson Boulevard, and Pacoima are involved in this proceeding. Each snackbar is operated under a separate license agreement with White Front. The Employer started operations at the West Jefferson Boulevard store on November 18, 1962, and entered into a license agreement with White Front on January 28, 1963. Operations at the Canoga Park store began on May 31, 1963, and a license agreement between the Employer and White Front was executed on July 3, 1963. The Pacoima store did not open until October 31, 1963, after the filing of the Employer's petitions with respect to the Canoga Park and West Jefferson Boulevard stores. At the time of the hearing, no license agreement had been executed between White Front and the Employer covering the Pacoima store.

Los Angeles Joint Executive Board of the Hotel and Restaurant Employees and Bartenders Union, AFL-CIO, herein called the Joint Board, seeks to represent the Employer's snackbar employees employed at the West Jefferson Boulevard location. Hotel, Motel and Restaurant Employees and Bartenders Union, Local 694, AFL-CIO, herein referred to as Local 694, seeks to represent, in separate units, the snackbar employees employed at the Employer's operations at Canoga Park and Pacoima. White Front and Retail Clerks Union Local 770, Chartered by the Retail Clerks International Association, AFL-CIO, herein called Local 770, contends that a current collective-bargaining contract between White Front and Local 770 is a bar to these petitions. They further contend that the requested snackbar units are inappropriate. The Employer filed petitions with respect to its facilities at Canoga Park and West Jefferson Boulevard because it had conflicting requests for recognition and did not know if the contract between White Front and Local 770 is a bar. The Petitioners argue that the provisions of the contract in question, with respect to new leased departments, are coercive and discriminatory, in that they attempt to subject employees of another employer to a union-security clause regardless of their wishes, and without giving them an opportunity to designate their collective-bargaining representative.

The contract between White Front and Local 770, urged as a bar, is effective from July 1, 1962, to June 30, 1967. The bargaining unit covers "all retail store employees and office clerical employees whose work is related to the operation of the retail stores (including, subject

³ These stores are located at Canoga Park, West Jefferson Boulevard, Pacoima, San Bernardino, Covina, and Torrance.

to the provisions of Section E hereof, employees of lessees, licensees and concessionaires) employed in the retail stores and offices of the Employer [White Front] located within the present geographic jurisdiction of the Union." The contract further provides that "should the Employer acquire, establish or operate an additional store or department . . . this Agreement shall apply to the retail store employees . . . employed in such store or department." Section E of the contract, referred to in the recognition clause, provides that the Employer will require operators of leased departments to agree to be bound by the terms of the agreement and, "upon request of the Union, to execute a copy thereof, provided that such requirement is not contrary to law." An appendix C to the contract amends section E so as to provide that the provisions of section E shall take effect, with respect to any new leased department, "immediately upon execution of the lease, sublease, license or concessionaire agreements"; and with respect to "any present leased department, which agrees in writing to be bound by the terms of this agreement, immediately upon so agreeing in writing." Appendix C further provides that wage rates and commissions for employees of any leased department shall be subject to negotiations between Local 770 and the operator of the leased department.

Under the license agreement between White Front and the Employer herein, the Employer agreed "to be bound by the terms and provisions of the White Front-Retail Clerks Agreement and any amendment or extension thereof and further agrees upon request of said Retail Clerks Union Local 770 to execute a copy of said agreement." During August and September 1963, the Employer and Local 770 discussed wage rates for the snackbar employees, but came to no agreement. Local 770 has not obtained authorization cards from the employees involved in this proceeding, and the contract between White Front and Local 770 has never been applied to the snackbar employees. Nor is there any evidence to show that the snackbar employees are aware of the existence of any contract covering their conditions of employment. At the time of the hearing, the Employer had not executed a contract with any labor organization covering these employees.

The record clearly establishes, and we find, that White Front and the Employer are not joint employers.⁴ Thus, the license agreement executed by them specifically provides that "this agreement is not intended to create and shall not be considered as creating any partnership relationship between the parties hereto, or any relationship between them other than that of Licensor and Licensee . . ." In addition, neither the contract nor the license agreement provides for the common handling of labor relations for the Employer's employees.

⁴ *S.A.G.E., Inc. of Houston and its Licensees*, 146 NLRB 325.

To the contrary, the agreement provides that if the licensee becomes involved in any labor difficulty as a result of which the store is threatened with being picketed, the licensor shall have the right to terminate the license agreement upon 24 hours' written notice, given at any time after such threat is received by it or such picketing is commenced. Further, the Employer hires and discharges the snackbar employees and sets their wage rates;⁵ there is no interchange of snackbar employees with any White Front employees; and their seniority is separate from that of White Front employees. The fact that the Employer's employees have certain working conditions in common with the employees of White Front is due to the fact that the operations of both employers are housed in the same stores, and does not arise from the license agreement.

Although, under its license agreement, the Employer agreed to be bound by the contract between White Front and Local 770, the Employer was never a party to this contract. Nor has the Employer ever entered into any oral or written agreement with Local 770. The only agreement affecting the Employer's employees is between the Employer and White Front. The agreement between White Front and Local 770 states that White Front's obligation with respect to operators of leased departments is limited to requiring "the operator of a leased department to agree to be bound by the terms of this Agreement, and, upon request of the Union, to execute a copy thereof, provided that such requirement is not contrary to law." The contract further provides that White Front "shall not be liable for any breach of contract or failure of a leased department to abide by the wages, hours and working conditions set forth in this Agreement."

It is clear from the foregoing that Local 770's contract with White Front does not bar the present petitions. The mere fact that the Employer agreed with White Front, under its license agreement, to be bound by the White Front-Local 770 contract does not constitute a consummated agreement as envisioned by the *Appalachian Shale* doctrine.⁶ Moreover, both the contract between White Front and Local 770 and the license agreement between the Employer and White Front contemplate that the licensee would execute a copy of the agreement. The Employer is not a party to any written agreement with Local 770. The only agreement affecting its employees is with White Front alone. As noted above, the terms of White Front's contract with Local 770 have never been applied to the Employer's employees, and Local 770 has no representation among these employees. As White Front and the Employers are not joint employers, and in the absence of any separate agreement between the Employer and Local 770, we find that

⁵ The license agreement between the Employer and White Front provides that the Employer shall "employ and be responsible for help in [its] department."

⁶ *Appalachian Shale Products Co.*, 121 NLRB 1160, 1161.

there is no agreement covering the Employer's employees sufficient to constitute a bar.⁷

4. The Petitioners seek to represent in separate units the Employer's snackbar employees working in the West Jefferson Boulevard, Canoga Park, and Pacoima stores. White Front and Local 770 contend that only storewide units are appropriate. The Employer takes no position with respect to the composition of the units.

The record does not show that the Employer has any other employees working in these stores. As the snackbar units sought by the Petitioners comprise all of the Employer's employees working at the White Front stores involved in these proceedings, we find that they constitute separate appropriate units.

We find that the following employees constitute separate units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

(1) All snackbar waiters and waitresses, cooks, and dishwashers employed at the Employer's facilities at 5433 West Jefferson Boulevard, Los Angeles, California, excluding all other employees, guards, and supervisors as defined in the Act.

(2) All snackbar waiters and waitresses, cooks, and dishwashers employed at the Employer's facilities at 213 Roscoe Boulevard, Canoga Park, California, excluding all other employees, guards, and supervisors as defined in the Act.

(3) All snackbar waiters and waitresses, cooks, and dishwashers employed at the Employer's facilities at 9727 Laurel Canyon, Pacoima, California, excluding all other employees, guards, and supervisors as defined in the Act.

[Text of Direction of Elections omitted from publication.]

⁷ We note that, although the Employer executed the same type of license agreement with White Front for its facilities at the San Bernardino store, the Employer executed a collective-bargaining contract with a labor organization other than that representing the White Front employees. Cf. *Bargain City, U.S.A., Inc.*, 131 NLRB 803. Inasmuch as we hold that the contract is not a bar, we find it unnecessary to consider other contentions made by the Petitioners in connection with the contract-bar issue.

Family Laundry & Dry Cleaning, Inc. and Laundry & Dry Cleaning International Union, AFL-CIO. *Cases Nos. 5-CA-2652 and 5-RC-4324.* June 3, 1964

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

On February 28, 1964, Trial Examiner John F. Funke issued his Decision in the above-entitled proceeding, finding that the Respondent
147 NLRB No. 30.