APPENDIX C

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT recognize or deal with Office and Professional Employees Local No. 3, Office Employees International Union, AFL–CIO, unless and until such organization is certified by the National Labor Relations Board.

WE WILL reimburse former or present employees for any amount of money they may have been required to pay Local 3 by reason of the enforcement of a union-security contract with Local 3, with interest at 6 percent per annum, from the date of payment by the employees affected.

KILPATRICK'S BAKERIES, INC.,
Employer.

Dated_____ By_____
(Representative) (Title)

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

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 13050 Federal Building, 450 Golden Gate Avenue, Box 36047, Telephone No. 556–3197.

David Gold and Harvey Tesler d/b/a Grand Central Liquors; Anco Central Corporation; Harry Pascal d/b/a Harry Pascal Food Co.; Ben Weinman d/b/a Central Bulk Foods; Isao Hongo and John Yamada d/b/a Isao Hongo-John Yamada Produce; Robert B. Sloane d/b/a Robert B. Sloane Produce; J. Louis Cohen and Milton S. Cohen d/b/a L & M Bakery; Rafael Penilla and Olga Penilla d/b/a Roast-To-Go, Petitioners *and* Retail Clerks Union, Local 770, affiliated with the Retail Clerks International Association, AFL–CIO.[1] *Cases Nos. 21–RM–1163 through 21–RM–1170. October 22, 1965*

DECISION AND DIRECTION OF ELECTIONS

Upon separate petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, a consolidated hearing was held before Hearing Officer Orville S. Johnson.[2] The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.[3] Briefs have been filed by the Employer-Petitioners and the Union.

[1] The names of the Union and all the Employer-Petitioners except Anco Central Corporation appear as amended at the hearing.

[2] After the hearing and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Regional Director issued an order transferring these cases to the Board for decision.

[3] At the hearing, the Hearing Officer, over the objection of the Union, revoked certain subpenas requested by the Union in its attempt to present evidence in support of its con-

Pursuant to the provisions of Section 3(b) of the Act, the National Labor Relations Board has delegated its powers in connection with these cases to a three-member panel [Chairman McCulloch and Members Fanning and Jenkins].

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

1. The Union contends that none of the Employer-Petitioners, with the possible exception of Grand Central Liquors, meets the legal or the Board's jurisdictional standard for the assertion of jurisdiction over retail enterprises [4] and, therefore, that the petitions should be dismissed. The Employer-Petitioners assert that their combined operations should be considered in determining whether the statutory and the Board's jurisdictional standards are met.

Each of the Employer-Petitioners operates a retail concession in the Grand Central Public Market (Market) in Los Angeles, California, under a lease agreement and sells to the public a variety of edible commodities, including fruits and vegetables, dairy and bakery products, prepared foods, dried beans, coffee and tea, tobacco products, and alcoholic beverages. The Market is housed in a large enclosed structure between two main streets with public entrances on both streets. Both public entrances are marked "Grand Central Public Market." There are no signs on the exterior of the Market designating the inside lessees. However, about half the lessees have their names above the stalls they occupy; other stalls are identified only by a number.

The Market is owned by a company known as Grand Central Public Market (Lessor). It employs a manager and two assistant managers who are in charge of the entire market. The Lessor provides janitors and maintenance men to keep the area clean and security men to police it. The Lessor also has a pest control company come in once a week.

There are approximately 35 lessees operating concessions in the Market. Each is signatory to a master form of lease with the Market and operates his concession subject to the terms of the lease. Through these agreements, which are uniformly applicable to all concessions, the Lessor retains control over all advertising on a marketwide basis [5] to the extent even of selecting the products that will be advertised and the prices at which they will be sold; has authority to inspect the lessees' premises at all times for cleanliness and to order any corrective measures; must approve all alterations, fixtures, and signs; and has author-

tention that the operations of the Employer-Petitioners do not affect interstate commerce within the meaning of the Act. In its brief, the Union states that "if the Board is of the opinion that there is jurisdiction, then it is requested that the subpenas be reinstated and the case remanded for further hearing" on this issue or otherwise the Union "is deprived of its right to a full and fair hearing." We deny this request of the Union since, as we find below, it is clear that the Board has statutory jurisdiction over these Employer-Petitioners and that the Union was accorded a full and fair hearing.

[4] *Carolina Supplies and Cement Co.*, 122 NLRB 88.

[5] Three or four lessees also do some advertising of their own.

ity to decide which articles the lessees may sell. Under the rules and regulations (which are an addendum to the lease agreement) the Lessor establishes conditions which all market employees must follow with respect to cleanliness, dress, use of tobacco and liquor, gambling, profanity, and arguments. The rules and regulations give the Lessor sole authority to settle disputes between customers and lessees. Also, the Lessor is given the right to set the days and hours the lessees must operate their concessions in the Market.[6]

Thus, it appears that the net effect of the lease agreements is to create the impression among store customers that they are dealing with a single integrated company and not with individual enterprises sharing space in a single-store building.

As is evident from the above, the Lessor not only exercises substantial control over the operational policies of the lessees, but it also exercises control over the labor policies of the lessees by setting the days and hours the latter must operate and by establishing what the dress, appearance, and conduct of employees shall be. In addition, the Lessor reprimands employees for not dressing properly or for not treating customers politely. The Lessor may also report such misconduct to the employees' employer. An official of the Lessor testified that it has the right to dismiss employees of lessees but has not done so for several years.[7] The Lessor also has requested that lessees discharge employees, and the lessees have complied with these requests.[8] Further, an article of the large agreement gives the Lessor "exclusive direction and control" over the industrial relations of the lessees.[9] Finally, the rules and regulations provide that the Lessor "may from time to time add to or make changes in the rules and regulations deemed necessary to the proper conduct of the market."

[6] Some of the lessees requested that the Market close on the national day of mourning after the assassination of the late President Kennedy. The Lessor refused the request, and all lessees had to be open for business on that day.

[7] One lessee testified that he was told to discharge an employee, apparently because of an overcharge complaint, but that he thought the employee was right and that when he took the employee's part, the Lessor "wanted to throw me out of the market on that account." Finally, the Lessor agreed that the lessee did not have to fire the employee.

[8] The lessees, however, have exclusive control over the hiring of their employees and set their wages and other terms of employment. Each of the lessees also decide whether he will enter into a collective-bargaining agreement with a union In the past, some lessees have entered into collective-bargaining agreements and others have not.

[9] This grant of authority is contained in the article covering advertising. The relevant sentences state: "All advertising . . . shall be under the exclusive direction and control of the Lessor. Advertising as here used includes public relations, sales and promotions, display, industrial relations and like activities as well as ordinary advertising." The Employer-Petitioners explain this placement by stating that "it is clear evidence that the Market owners believe that any labor dispute involving a concessionaire affects the business of the entire market." It does appear, however, that the Lessor has chosen not to exercise this control over the past few years and has permitted the lessees to establish their own industrial relations. Yet, it is clear that the Lessor could exercise such authority at any time it chose to do so.

In view of the terms of the lease relationship between the Lessor and the lessees, and on the basis of the entire record, it is clear that the Lessor is in a position to influence the labor policies of the lessees. Thus, we find that the Lessor and each of the lessees are associated as joint employers in a common enterprise,[10] and that it is appropriate to combine the gross revenues of all Employer-Petitioners for jurisdictional purposes.[11]

With respect to legal jurisdiction, in 1964, Employer-Petitioner Grand Central Liquors purchased at auction Spanish wine from United States customs in the amount of $3,400 and purchased $750 worth of cigars directly from outside the State of California. Employer-Petitioner Central Bulk Foods purchased beans directly from Idaho in the amount of $40,000. In addition, Employer-Petitioner Roast-To-Go purchased pork products imported from Denmark in the amount of $3,042 from a firm which, in turn, purchased such goods directly from outside the State, and five other Employer-Petitioners [12] purchased an indeterminate amount of goods from firms which, in turn, received such goods directly from outside the State. Such amounts of interstate operations, being more than *de minimis*, are sufficient to establish legal jurisdiction in the Board.

The joint operations of the Employer-Petitioners also satisfy the Board's $500,000 jurisdictional standard for retail enterprises since their combined gross revenues for 1964 exceeded $1.5 million.

Accordingly, we find that the Employer-Petitioners are engaged in commerce within the meaning of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.[13]

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[10] See *Checker Cab Company and its Members*, 141 NLRB 583; *Freda Redmond, Sir James, Inc.*, 147 NLRB 1025; *Spartan Department Stores*, 140 NLRB 608; *Frostco Super Save Stores, Inc.*, 138 NLRB 125. The cases *of S.A.G.E., Inc. of Houston and its Licensees*, 146 NLRB 325, and *Esgro Anaheim, Inc.*, 150 NLRB 401, are distinguishable. In those cases, the licensors had not exercised substantial control over the labor policies of the licensees. Further, in *Esgro*, the license agreement specifically provided that it was "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 or Licensee" while in *S.A.G.E.*, the license agreement specifically provided that neither party shall hold itself out to be or act as the agent, servant, or employee of the other, and that the relationship between the two parties shall be only that of the licensor and licensee.

[11] See, *e.g.*, *Checker Cab Company*, 141 NLRB 583, 587.

[12] Grand Central Liquors; Harry Pascal Food Co.; Central Bulk Foods; Isao Hongo-John Yamada Produce; and Robert B. Sloane Produce.

[13] Although Chairman McCulloch concurs in the finding that the Lessor and lessees are joint employers, he would also find that the operations of these Employer-Petitioners satisfy the Board's jurisdictional standard for retail enterprises on the theory expressed in *Trade Winds Motor Hotel & Restaurant*, 140 NLRB 567. Here, as in *Trade Winds*, the enterprises are held out to the public as one single, integrated enterprise, occupy a common situs, serve essentially the same class of customers, and supplement each other. Due to the great amount of business the Market does (approximately $6 million annually), the impact exerted upon commerce by a labor dispute involving one of the lessees in the Market would be much greater than that exerted upon commerce by a labor dispute at a separately located retail business.

2. Retail Clerks Union, Local 770, affiliated with the Retail Clerks International Association, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. The Employer-Petitioners seek elections in separate units of their employees. The Union contends that it has never demanded the right to represent any of the employees of the Employer-Petitioners, that it has also specifically disclaimed any interest in representing such employees, and that, therefore, no questions concerning representation exist.

Some of the lessees in the Market have in the past signed collective-bargaining agreements with the Union and with other unions. The Union has never represented all employees in the Market, and the number of lessees with whom it has had collective-bargaining agreements has varied from time to time. On March 31, 1964, a collective-bargaining agreement between the Union and various lessees in the Market expired. From March 1964 to January 1965, the Union was successful in getting some of the lessees to sign new collective-bargaining agreements. Other lessees, however, refused to sign new agreements. In mid-January, the Union began to picket both entrances to the Market with signs that stated:

> Please Do Not Patronize Except For Those Employers Who Display The Union Store Card At Register. All Other Employers In The Grand Central Market Have Refused To Negotiate A New Collective Bargaining Agreement Affecting Their Employees. Your Cooperation Is Appreciated. Retail Clerks' Union, Local 770, AFL–CIO.

At the same time or about February 1, the Union used the following sign:

> Grand Central Market Employer Unfair to the Retail Clerks Except Meat Departments [14] and the following Employers:
>
> *B–6*
> *D–8*
> *3-Crown*
> *Richard Vogel*
> *Hiron Cebrario*
> *Yoshio Tamaka*
> *G–14*

The names of 11 other lessees of the Market were added to the sign after they had entered into collective-bargaining agreements with the Union.

[14] Apparently the employees of the meat department lessees are represented by the Meat Cutters Union.

In conjunction with the latter picket sign, the Union also passed out leaflets which stated:

DEAR FRIENDS:
PLEASE REMEMBER TO SHOP WHERE YOU SEE THE UNION STORE CARD ON DISPLAY.
WE ARE HAPPY TO REPORT THAT A NUMBER OF THE EMPLOYERS OF GRAND CENTRAL HAVE NOW AGREED TO THE FOOD INDUSTRY AGREEMENT—SO WE'RE BACK ON THE JOB.
LOOK FOR US IN THE DEPARTMENTS AND STALLS DISPLAYING THE UNION STORE CARD.
THANK YOU FOR YOUR PATRONAGE.
RETAIL CLERKS UNION, LOCAL 770.

In mid-February 1965, apparently after the Employer-Petitioners had filed the present representation petitions, the Union began using a different sign reading as follows:

PLEASE PATRONIZE	Local 770 (Retail Clerks' Seal)

As of the date of the hearing, the Union continued to picket the Market entrances with the last sign.

During the picketing from January to mid-February, a number of employees of various employers in the market walked out and some of them walked the picket line. As soon as their employers signed the contract, the employees returned to work and their employers' names were added to the picket signs as having signed a contract with the Union.

Some of the employees of the Employer-Petitioners walked out during this period of time, and some of them walked the picket line. Also, the owner of Employer-Petitioner Harry Pascal Food Co.[15] heard a union organizer tell one of his employees (who walked out later) that "it is better for you to walk out right now" and that the union organizer told a second employee that "you walk out, otherwise you will be sorry." Further, approximately 3 months before the hearing, the Union expressly requested recognition of Employer-Petitioners Harry Pascal Food Co. and Central Bulk Foods.

At no time during the picketing did the Union, by its pocket signs or handouts, advise the public that it was picketing only for publicity

[15] It appears that Harry Pascal Food Co. was the only Employer-Petitioner which had entered into the contract with the Union which expired on March 31, 1964.

purposes or that it was not seeking immediate recognition of the lessees in the Market who had not signed collective-bargaining agreements. Although the Union now claims that it was picketing only for publicity purposes and disclaims any interest in representing the employees of the Employer-Petitioners, it did not so advise them until date of the hearing which, of course, was after the Employer-Petitioners had filed these representations petitions.

Section 9(c)(1)(B) of the Act provides in substance that the Board shall entertain an election petition filed by an employer only when the employer is presented with a claim for statutory recognition. However, the Board has long held that a union may properly withdraw its claim to representation at the hearing on the employer's petition and thereby foreclose a determination that a question concerning representation exists, provided the union's disclaimer is clear, unequivocal, and made in good faith, and the union's conduct is not otherwise inconsistent with its disclaimer to representation. Therefore the question to be decided in each case is whether the Union has genuinely disclaimed or whether its alleged disclaimer is simply sham and for that reason not to be given effective force.[16]

In the instant cases, the picketing at the outset was clearly aimed at all lessees who had not signed collective-bargaining contracts with the Union; was revised during its progress to exempt lessees only after they had signed contracts; was attended by recognitional demands upon two of the eight Employer-Petitioners and by inducements to strike directed at the employees of at least one of the Employer-Petitioners; and, although the picketing sign was revised again after the RM petitions were filed, it was done without indicating an abandonment of its prior recognitional claims made upon two of the Employer-Petitioners. Further, the Union never clearly advised the public by its handbills that it was picketing for publicity purposes only or that it was not seeking immediate recognition from the Employer-Petitioners, and it never so advised any of the Employer-Petitioners until the date of the hearing. In view of the fact that the picketing at its inception clearly was aimed at all lessees in the Market and the fact that the Union presented two of the Employer-Petitioners with a demand for immediate recognition, we attach no special significance to the fact that the Union had not yet explicitly presented the other six Employer-Petitioners with such a demand. In all the circumstances of these case, it is clear that the Union was demanding immediate recognition of all of the Employer-Petitioners.

Thus, based on the foregoing and on the basis of the record as a whole, we are unable to conclude that the Union's disclaimers pre-

[16] *Queen's Table, Inc., d/b/a Rochelle's Restaurant*, 152 NLRB 1401.

sented at the hearing and in its brief were made in good faith. Rather, we find that the Union's entire course of conduct was inconsistent with its expressed disclaimers.[17]

Accordingly, we find that questions affecting commerce exist concerning the representation of certain employees of the Employer-Petitioners within the meaning of Section 8(c)(1) and Section 2(6) and (7) of the Act.

4. The Employer-Petitioners request elections in separate units of their respective employees employed in the Market.[18] The Union takes no position on the scope of the appropriate units. In view of the position of the parties, the history of bargaining in separate units in the Market, and the fact that no claim is made that only an overall unit is appropriate, we find the requested units to be appropriate and shall grant the Employer-Petitioners' requests.

We find, therefore, that the employees of each Employer-Petitioner employed at the Grand Central Public Market in Los Angeles, California, excluding professional employees, guards, and supervisors as defined in the Act, constitute separate units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

[Text of Direction of Elections omitted from publication.]

[17] *Rochelle's Restaurant, supra; Kenneth Wong, et al. d/b/a Capitol Market No 1,* 145 NLRB 1430. *Martino's Complete Home Furnishings,* 145 NLRB 604, *Andes Candies, Inc.,* 133 NLRB 758; *Miratti's Inc.,* 132 NLRB 699, in which the Board accepted unions' disclaimers, are distinguishable on their facts. In *Martino's* almost 2 years had elapsed between the union's last demand for recognition and the date of the hearing; here, on the other hand, the Union's last demand for recognition was not more than 3 months prior to the hearing; moreover, in *Martino's,* unlike here, the union continually disclaimed a present recognitional objective in its leaflets to the public. In *Andes Candies,* unlike here, the employer had never been presented with a claim to recognize the union. And in *Miratti's,* also unlike here, the union, prior to the commencement of the picketing and before the hearing took place, informed the employer that it was not seeking to represent its employees. See *Capitol Market No. 1, supra,* 1432, footnote 5.

[18] At the hearing, Anco Central Corporation amended its requested unit to include "all employees of the Employer at Grand Central Market and at its Hill Street and Broadway stores." We find this amendment to be without merit and deny it.

The Standard Oil Company (an Ohio Corporation) *and* The Independent Oil Workers Association Local #1. *Case No. 9-CA-3393. October 25, 1965*

DECISION AND ORDER

On August 2, 1965, Trial Examiner Stanley Gilbert issued his Decision in the above-entitled proceeding, finding that the Respondent had not engaged in certain unfair labor practices and recommending that