

who approved of it—claims that manifestly run counter to the fact that he admittedly expressed disapproval of the new program to Sachs (not to speak of the General Counsel's contention, in his brief, that Kissam, Lane, and Drew concertedly "complained about the new rule"), and are not entitled to belief.

Taking these considerations into account, I see no reason to accept Kissam's claim regarding the alleged restaurant discussion over Grillette's denial that he made the remarks imputed to him; nor Kissam's account of his conversation with Grillette regarding a "recommendation" over that given by Grillette. One need not be persuaded that Grillette is altogether a credible witness; it is enough that Kissam's relevant testimony lacks the qualitative weight needed to support the finding the General Counsel seeks.

Finally, as in the case of the discharge, and for much the same reasons, the record will not support a conclusion that the refusal to reemploy Kissam was unlawful. To be sure, undisputed testimony by Kissam that he was rehired by Stardust about 7 years ago after quitting suggests a possibility that, contrary to what Sachs told Kissam following the latter's discharge, Stardust has no "policy" that would preclude his rehire, but at best this raises no more than a suspicion that the "policy" excuse was a pretext to conceal an unlawful motive for the refusal to reemploy Kissam. Even if one assumes that the "policy" excuse was a pretext, one may as reasonably believe, it seems to me, that it was a mask for continuing anger by Sachs toward Kissam as to conclude that it concealed an unlawful purpose.

The sum of the matter is, for the reasons stated, that the record does not establish by evidence of preponderant weight that the Respondent violated the Act by discharging Kissam, or refusing to reemploy him, or made any statements, through Grillette, abridging any Section 7 rights of employees. Accordingly, I shall recommend dismissal of the complaint.

#### CONCLUSIONS OF LAW

Upon the basis of the foregoing findings of fact, and the entire record in this proceeding, I make the following conclusions of law:

1. The Company is, and has been at all material times, an employer within the meaning of Section 2(2) of the Act.
2. The Union is, and has been at all material times, a labor organization within the meaning of Section 2(5) of the Act.
3. The evidence does not establish that the Company has engaged in the unfair labor practices imputed to it in the complaint.

#### RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and the entire record in this proceeding, it is recommended that the National Labor Relations Board issue an order dismissing the complaint.

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**Sound Contractors Association<sup>1</sup> and International Brotherhood of Electrical Workers, AFL-CIO, Petitioner.** *Case 28-RC-1446.*  
*December 23, 1966*

#### DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held at Phoenix, Arizona, on March 16, 1966, before Hearing Officer Roy H. Garner. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. Thereafter, the Employer filed a brief.

<sup>1</sup> The name of the Employer appears as amended at the hearing.

Upon the entire record in this case, including the Employer's brief, the National Labor Relations Board finds:

1. The Employer is an Association of individual employers and is engaged in commerce within the meaning of the Act.<sup>2</sup>

2. The Petitioner, and Communications Workers of America, AFL-CIO, herein called the Intervenor, are labor organizations claiming to represent employees of members of the Employer.<sup>3</sup>

3. The petition herein seeks an election in an Associationwide unit of sound, signal, and television system installers, technicians, servicemen, and their helpers, employed by members of the Employer. The Intervenor contended at the hearing that separate agreements which it had previously executed with three of the six members of the Employer, in contemplation of later Associationwide bargaining, should be construed as barring the petition, and that therefore no question concerning representation is raised by the petition. One agreement contains only a bare recognition clause, and was executed by the Intervenor and Nelson-Hershfield Electronics, a member of the Employer, in October 1965. The remaining agreements, entered into about the same time by the Intervenor and two other members of the Employer, Lawrence Engineering Co. and Engineering Sound, Inc., are not complete collective-bargaining contracts; for example, they do not contain provisions which regulate the employees' wages or hours. Nor do any of the agreements contain either definite termination dates or provisions which are sufficiently complete to stabilize the bargaining relationship of the parties. Contrary to the Intervenor's contention, they accordingly do not operate as a contract bar to the present petition.<sup>4</sup> Nor may these recognition agreements be considered a bar within the *Keller Plastics* principle.<sup>5</sup> Unlike the situations in which that principle has been applied, it does not affirmatively appear in this case that the Employer extended recognition to the Intervenor in good faith on the basis of a previously demonstrated showing of majority and at a time when only that union was actively engaged in organizing the unit employees. Accordingly, we find that the petition herein was timely filed, and that a question affecting commerce exists concerning the representation of certain employees of the Employer, within the meaning of Sections 9(c) (1) and 2(6) and (7) of the Act.

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<sup>2</sup> The individual employers belonging to the Association are Bruce's World of Sound, Engineering Sound, Inc., Executone of Arizona, Inc., Lawrence Engineering Company, Nelson-Hershfield Electronics, and National TV and Appliances, Inc.

<sup>3</sup> The Intervenor was allowed to intervene in this proceeding on the basis of a showing of interest.

<sup>4</sup> *Appalachian Shale Products Co.*, 121 NLRB 1160, 1163; *Pacific Coast Association of Pulp and Paper Manufacturers*, 121 NLRB 990, 993.

<sup>5</sup> *Keller Plastics Eastern, Inc.*, 157 NLRB 583; *Universal Gear Service Corporation*, 157 NLRB 1169.

Member Fanning agrees that the recognition agreements do not operate as contract bars. He finds *Keller Plastics* inapplicable to the facts of this case. Accordingly, he concurs in the result.

4. As stated, the petition seeks an Associationwide unit.

Nelson-Hershfield Electronics contends that it is not part of the aforementioned unit. The first of its arguments is that it did not give the Association general authority to deal with labor organizations representing its employees, but gave limited authority to deal only with the Intervenor as such representative. There is adequate corroborative evidence in the record, however, to show that this argument lacks merit, and that the Employer was fully authorized by its members to deal with any labor organization representing the employees, and we so find.

Secondly, Nelson-Hershfield argues that in any event it withdrew from the Associationwide unit in late February 1965. We have maintained a policy of allowing an employer to withdraw from a multi-employer bargaining unit, provided the withdrawal is made *at an appropriate time*, usually prior to the start of multiemployer negotiations. Nelson-Hershfield Electronic's attempt to withdraw from the Associationwide unit is clearly untimely; the attempted withdrawal occurred more than 2 months after negotiations between the Employer and the Intervenor commenced on an Associationwide basis and not until after Nelson-Hershfield Electronics received notice of the present petition. Therefore, we find that Nelson-Hershfield Electronics was a member of the Employer when the petition herein was filed, and remains such, despite its untimely attempt to withdraw from the existing Associationwide unit.<sup>6</sup>

Accordingly, we conclude that the Associationwide unit requested by the Petitioner, including Nelson-Hershfield Electronics, is an appropriate one for the purposes of collective bargaining. We find that the following employees of the Association's members constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All sound, signal, and television system installers, technicians, servicemen, and their helpers, including those engaged in the installation and servicing of master antenna TV systems and hospital call systems, but excluding office clerical employees, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]<sup>7</sup>

[MEMBER JENKINS took no part in the above Decision and Direction of Election.]

<sup>6</sup> *Quality Limestone Products, Inc.*, 143 NLRB 587, 591.

<sup>7</sup> An election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 28 within 7 days after the date of this Decision and Direction of Election. The Regional Director shall make the list available to all parties to the election. No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. *Excelstor Underwear Inc*, 156 NLRB 1236.