

**Caribbean Restaurants, Inc.<sup>1</sup> and Union De Trabajadores Industriales De Puerto Rico, Inc., Petitioner.** *Case 24-RC-2909.*  
*January 6, 1967*

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Joseph M. Chandri. 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 National Labor Relations Board has delegated its powers in connection with this case to a three-member panel [Chairman McCulloch and Members Jenkins and Zagoria].

Upon the entire record in this case, 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. The labor organization involved claims to represent certain employees of the Employer.

3. No 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, for the reasons stated below.

Caribbean Restaurants, Inc., a Delaware corporation (herein called Caribbean or Employer), owns and operates four restaurants and a commissary to supply the restaurants in the San Juan, Puerto Rico, metropolitan area. Three of the restaurants and the commissary are separately incorporated; however, the officers and directors of Caribbean are also the officers and directors of the four subsidiary corporations.

The Petitioner seeks to represent a unit of all employees, with the statutory exclusions, at the Employer's Rio Piedras, Puerto Rico, restaurant which is incorporated as University Restaurant Corporation (herein called University). The Employer contends that because of the highly integrated nature of its chain operation the single restaurant unit sought by the Petitioner is not appropriate, and that the only appropriate unit consists of all employees of the Employer at its four restaurants and commissary. There is no history of collective bargaining.

All four restaurants and the commissary are located within the greater San Juan metropolitan area and 7½ miles is the greatest dis-

<sup>1</sup> As amended by stipulation at the hearing.

tance between any of them; most are  $3\frac{1}{4}$  to  $4\frac{1}{4}$  miles apart. The greatest distance between the University restaurant and the other restaurants or commissary is  $4\frac{1}{4}$  miles.

The four restaurants are operated under the same name—"Burger King." They sell only a limited number of items (eight items, including three drinks, are listed on the menu). Each restaurant has a manager, an assistant manager, and from 15 to 24 employees; the commissary has 4 employees. The total number of employees is 76, of whom 17 are employed at the University restaurant.

The Employer's operation is marked by a substantial degree of centralized management and administrative control. An Operations Committee, consisting of the president, vice president and general manager, operations supervisor, and personnel director, determines all broad policies concerning company operational methods, restaurant operations, labor, and personnel. The vice president and general manager is responsible for the implementation of the Committee policies and directs the operations supervisor and personnel director to that end.

The operations supervisor directs the day-to-day operation of the restaurants. In addition to checking on application of the work rules, he makes specific decisions concerning on-the-job training, employee attire, wage increases, and restaurant operation, within the broad policies set down by the Operations Committee. He does not have an office, but travels constantly from restaurant to restaurant. The operations supervisor visits each restaurant daily; if it becomes necessary for him to spend more time in one restaurant, the general manager assumes his duties and visits the other restaurants. The operations supervisor covers the night shift 1 week each month, as does the personnel director, to insure that the night crews are properly supervised.

The personnel director interviews all prospective employees, who are sent to him by the restaurant manager, checks their job histories, has a veto over all hiring and discharge decisions, makes all employees' terminations, and grants all leaves of absence. Job training of a continuing nature is under his direction and he travels from restaurant to restaurant to check both new and old employees; he keeps records of the job skills each employee acquires for the purpose of recommending wage increases. Jointly, the operations supervisor and personnel director make all employee transfers, approve all vacations, and make all promotions.

The Employer has a central office where all records, accounts, and payrolls are separately maintained for each restaurant or corporation as required by law. The payroll for all employees is prepared at the central office. All personnel reports are kept by the personnel director at the central office. Only the president and vice president

may sign checks drawn against the bank accounts of the separate corporations.

With slight variations the restaurants are open from 10 a.m. to 12 p.m. They all use identical signs and menus, and sell the same products at the same prices. The employees at all four restaurants wear the same uniforms. The working conditions for all employees are the same: They have the same rates of pay, bonus program, vacation plan, promotion standards, holidays, work rules, training program, credit union, employee discounts, insurance program, and employee manual.

The commissary provides all the supplies for the restaurants except for fresh milk. The restaurant manager orders supplies, which are delivered each morning, from the commissary. The commissary closes at 3 p.m. each day and if the proper amounts are not ordered or delivered, the individual restaurants transfer supplies from one to another; such transfers are commonplace and are made by the employees in their own vehicles. All supplies are purchased by the operations supervisor or the general manager, except that produce is purchased on a daily basis by the commissary manager from an approved list of suppliers.

The record reveals that the individual restaurant managers exercise very little control over the operation of their restaurants. They have no authority to make policy concerning how their restaurants are to be operated, but follow the uniform rules and regulations that apply to all restaurants. They position employees according to need, but otherwise work with the other employees preparing food. The restaurant managers do not set wage scales, make promotions, or transfer employees. Although they do order supplies from the commissary, which appears to be a routine task, they are not allowed to purchase supplies under any circumstances. Each manager hires his own employees. He can discharge new employees within the first 30 days of their employment at his discretion; but after 30 days only for theft, intoxication, or insubordination. However, all the foregoing decisions are subject to the approval of the personnel director.

It is a common practice for the Employer to transfer employees from restaurant to restaurant or from commissary to restaurant as necessity dictates. In 1965 there were 51 separate instances where employees were transferred from one restaurant or the commissary to another. From January 1 to June 6, 1966, there were 30 such transfers. Restaurant managers are also subject to transfer and three such transfers occurred between August and November 1965.

Although we have held that a single store or restaurant unit in a chain operation is presumptively appropriate,<sup>2</sup> we have also empha-

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<sup>2</sup> *Purity Food Stores, Inc. (Sav-More Food Stores)*, 160 NLRB 651; *Frisch's Big Boy Ill-Mar, Inc.*, 147 NLRB 551; *Sav-On Drugs*, 138 NLRB 1032.

sized that this is not an absolute rule.<sup>3</sup> In a case such as this, we must determine whether the single restaurant constitutes a "distinct, self-contained economic unit" which is "inherently apt" for bargaining purposes<sup>4</sup> or whether the single restaurant has been so effectively merged into a more comprehensive unit that it has lost its individual identity, and is therefore inappropriate.

We are of the opinion that the University restaurant does not function as a "distinct, self-contained economic unit" and therefore does not constitute an appropriate bargaining unit.

We note, initially that the local restaurant managers possess only minimal autonomy, in that they exercise very little real control over the operation of their restaurants.<sup>5</sup> Thus, the restaurant managers do not set wages, initiate or grant promotions, grant leaves of absence, schedule vacations, transfer employees, or purchase supplies. After the commissary closes at 3 p.m., a manager who needs supplies must obtain them from one of the other restaurants or not at all, since he is not allowed to purchase supplies under any circumstances. The manager can only order supplies from the commissary, which, in view of the limited number of items on the menu, is a routine task. Although the manager hires his own employees and may discharge them within the first 30 days of their employment, and after 30 days only for limited reasons, his decisions are subject to the approval of the personnel director.

On the other hand, it appears that the operations supervisor, who has no office and visits the restaurants daily, effectively supervises the day-to-day operations of the restaurants. The feasibility of such supervision by the operations supervisor is made possible by the limited menus (only five food items and three drinks) and the close proximity of the restaurants.

The highly integrated nature of the Employer's operation is also evidenced by what amounts to almost complete centralization of control of labor relations and administration. Thus, all personnel records, financial accounts, and payrolls are kept by the central office; the labor and operations policy for all restaurants is determined by the Operations Committee; the working conditions for all employees, including rates of pay, bonus program, vacation plan, promotion standards, work rules, training program, and holidays, are the same; and the restaurants all use the same signs and menus and sell the same

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<sup>3</sup> *Purity Food Stores, Inc. (Sav-More Food Stores)*, *supra*.

<sup>4</sup> *Ibid.* at 660.

<sup>5</sup> For this reason the case is clearly distinguishable from *Frisch's Big Boy III-Mar, Inc.*, 147 NLRB 551, where 1 of a chain of 11 restaurants was found to constitute an appropriate unit primarily because of the substantial degree of autonomy that existed at each restaurant as reflected in the control each manager exercised in the day-to-day operation of his restaurant.

products at the same prices, and all employees wear the same uniforms. Further evidence of the integrated nature of the Employer's operation is revealed by the substantial amount of employee interchange among the restaurants and commissary. Finally, we note the close geographic proximity of the restaurants; all four restaurants and the commissary are located within the greater San Juan metropolitan area.

On the basis of the foregoing, particularly the integrated nature of the Employer's operation as evidenced by the lack of autonomy in the individual restaurants and the centralized control of labor relations and administration, the interchange of employees among the restaurants and commissary, and the close geographic proximity of the restaurants and commissary, we find that a unit limited to employees at the University restaurant is not appropriate. Accordingly, we shall dismiss the petition.

[The Board dismissed the petition.]

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**Colecraft Mfg. Co., Inc. and Textile Workers Union of America,**  
**AFL-CIO.** *Case 3-CA-2792. January 9, 1967*

### DECISION AND ORDER

On July 20, 1966, Trial Examiner Harold X. Summers issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in certain unfair labor practices within the meaning of the National Labor Relations Act, as amended, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. The Trial Examiner also found that Respondent had not engaged in certain other unfair labor practices and recommended that such allegations of the complaint be dismissed. Thereafter, Respondent, General Counsel, and the Union each filed exceptions to the Trial Examiner's Decision and supporting briefs.<sup>1</sup>

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

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial

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<sup>1</sup> Respondent's request for oral argument is hereby denied as the record, exceptions, and briefs adequately present the issues and positions of the parties.