Selective Service Act and the Universal Military Training and Service Act, as amended, after discharge from the Armed Forces.

(c) Preserve and, upon request, make available to the National Labor Relations Board or its agent, for examination and copying, all payroll records, social security records, timecards, personnel records and reports, and all other records necessary or useful to determine or compute the amount of backpay due, as herein provided.

(d) Post at its plant premises in Brooklyn, New York, copies of the attached notice marked "Appendix." [36] Copies of said notice, on forms provided by Region 29 of the Board (Brooklyn, New York), after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, in all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the aforesaid Regional Director, in writing, within 20 days from the date of the receipt of this Decision, what steps Respondent has taken to comply herewith.[37]

IT IS FURTHER ORDERED that those allegations of the complaint alleging violations of Section 8(a)(1) of the Act not found herein, be, and they hereby are, dismissed.

[36] In the event that this Recommended Order is adopted by the Board, the words "a Decision and Order" shall be substituted for the words "the Recommended Order of a Trial Examiner" in the notice In the further event that the Board's Order is enforced by a decree of a United States Court of Appeals, the notice shall be further amended by the substitution of the words "a Decree of the United States Court of Appeals Enforcing an Order" for the words "a Decision and Order"

[37] In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify the aforesaid Regional Director, in writing, within 10 days from the date of this Order, what steps Respondent has taken to comply herewith."

Bargain Town U.S.A. of Puerto Rico, Inc. *and* Retail Clerks Union, Local 552, Retail Clerks International Association, AFL-CIO, Petitioner. *Case 24-RC-2806. January 24, 1967*

DECISION ON REVIEW

On April 5, 1966, the Regional Director for Region 24 issued a Decision and Direction of Election in the above-entitled proceeding in which he found appropriate, as requested by the Petitioner, a single-store unit of all employees at the Employer's Carolina, Puerto Rico, store, excluding, *inter alia*, employees of licensed or leased departments. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer filed a timely request for review of the Regional Director's Decision. By telegraphic order dated May 6, 1966, the National Labor Relations Board granted the request for review insofar as it involved the appropriateness of the single-store unit and the unit placement of employees of the licensed and leased departments. Thereafter, the Employer and Petitioner filed briefs.

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 Zagoria].

The Board has considered the entire record in this case with respect to the issue under review, together with the briefs of the parties, and makes the following findings:

The Employer is one of three separately incorporated but commonly owned and controlled retail department stores located respectively in Carolina, Bayamon, and Ponce, Puerto Rico. The store at Carolina, herein involved, is a large discount retail operation which occupies 150,000 square feet. It includes a number of departments operated by Bargain Town, the instant Employer, as well as six other departments operated respectively by other unrelated employers under lease or license agreements.[1] To the public all departments in the Carolina store appear to be one enterprise.

Under their agreements, the lessee and licensees pay a fixed rental plus a percentage of sales, establish their own pricing policies subject to the Employer's review, adjust customer complaints initially, purchase supplies, and hire, fix rates of pay, and withhold taxes from their employees. The Employer controls all advertising, has authority to audit the records of each department, allocates floor space and approves the installation of furnishings and equipment thereon, sets the working hours and store rules for all employees, and requires the lessee and licensee to have a sufficient staff and stock of merchandise. The Employer and licensee may terminate the agreement on 30 days' notice with or without cause.

The lease agreement states that the lessee and the Employer will establish satisfactory labor policies and use reasonable efforts to settle promptly any labor dispute which may arise with the tenant's employees "provided that the Tenant will at all times have exclusive control over its labor relations policies, and policies on wages, hours, working conditions, or conditions of employment." The license agreement provides that in the event the licensee is requested to enter into a contract with the Union with which the Employer has an existing agreement, the licensee shall enter into the agreement with the same union. It also provides that the Employer may terminate the agreement forthwith if the licensee "be picketed or threatened with picketing as a result of a labor dispute with any labor organization." Both the lease and license agreements expressly negate the creation of a joint venture or any relationship other than that of licensor-licensee or lessor-lessee.

The Regional Director found, and we agree, that a unit limited to the employees at the Carolina store sought by the Petitioner is appro-

[1] A supermarket operates under a lease agreement; and the shoe, camera and records, furniture, jewelry, and major appliance departments operate under license agreements The employees of each of these departments have their respective managers and do not interchange with other employees.

priate.[2] He excluded from the unit sought the employees of the leased and licensed departments on the ground that there was no joint-employer relationship between the operators of such departments and the Employer herein. The Employer contends that a joint-employer relationship exists and that therefore the employees of the leased and licensed departments must be included in the storewide unit.

For purposes of decision here, we need not determine whether the record substantially supports a finding that a joint-employer relationship exists between the Employer and its licensees and lessee. For even if the existence of such a relationship were found, it does not necessarily follow that the storewide unit including leased and licensed department employees is the only appropriate unit. The question for determination is whether the store unit sought by the Petitioner, which excludes the disputed employees, may also be an appropriate unit within the meaning of the Act.[3] While there are circumstances indicating that all employees working at the store share a common community of interest in certain respects, there are other significant factors which establish that the employees of the leased and licensed departments in other respects also have a community of interest separate and distinct from that of the other employees. Thus, the lessee and each licensee are individual entities, unrelated to the Employer except contractually; and, within the framework of the lease or license agreement, each carries on an individual business under its own immediate supervision and control. The lessee and licensees have the primary responsibility for the hire, discharge, wages, and supervision of their own employees. Under all the circumstances, including the absence of a bargaining history for any of the employees and of a request by a union for the inclusion of the leased and licensed departments, we find that the employment interests of the employees of these departments are sufficiently different from those of the employees sought to warrant their exclusion from the unit.

Accordingly, we find that the following employees of the Employer constitute a unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full time and regular part-time sales and service employees employed by the Employer at its store in Carolina, Puerto Rico, including cashiers, warehouse employees, and office clerical employees, but excluding department heads, employees of leased or licensed departments, guards, and supervisors as defined in the Act.

[2] Although the Employer alleges that "frequent interchange" takes place between the Employer's various stores, the record shows that over a period of 1½ years there have been transfers of 45 to 50 persons between the stores This figure includes 24 department managers, 4 or 5 from the general office, and only 17 under the rank of department head, and of the total figure about 50 percent were permanent transfers. We find that such evidence of interchange is not a sufficient basis to reject the finding that a single store unit at Carolina is appropriate

[3] See *Metropolitan Life Insurance Company (Woonsocket, R I)*, 156 NLRB 1408

We therefore remand the case to the Regional Director for the purpose of holding an election pursuant to his Decision and Direction of Election, as affirmed herein, except that the payroll period for determining eligibility shall be that immediately preceding the date below.

Sperti Sunlamp Division, Cooper-Hewitt Electric Co., Inc. ***and*** **United Steelworkers of America, AFL-CIO.** *Case 9-CA-3553. January 25, 1967*

DECISION AND ORDER

On May 11, 1966, Trial Examiner Eugene F. Frey issued his Decision in the above-entitled proceeding, finding that Respondent had not engaged in certain unfair labor practices and recommending that the complaint be dismissed, as set forth in the attached Trial Examiner's Decision. Thereafter, the General Counsel, Respondent, and the Charging Party filed exceptions to the Trial Examiner's Decision and briefs. Respondent also filed a brief in answer to the exceptions and briefs filed by the General Counsel and the Charging Party. Thereafter, the Charging Party moved that this case be consolidated with Case 9-CA-3669, on the ground that both cases presented common questions of law and fact, and consolidation was necessary for a complete and just determination. Respondent opposed the motion.

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 Jenkins and Zagoria].

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and the briefs, and the entire record in this case,[1] and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.[2]

[The Board dismissed the complaint.]

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[1] The Charging Party's motion to consolidate is hereby denied, since we find that this case and Case 9-CA-3669 involve separate and distinct questions of law and fact, and consolidation is not necessary in order to make a proper determination. The request of Respondent for oral argument is denied as the record and briefs in our opinion adequately present the positions of the parties.

[2] Under the established policy not to overrule a Trial Examiner's credibility findings unless a clear preponderance of all the relevant evidence convinces us that they were incorrect, we find no basis for disturbing the credibility findings made by the Trial Examiner. *Standard Dry Wall Products, Inc.*, 91 NLRB 544, enfd. 188 F.2d 362 (C.A. 3).