

**Red-More Corporation, d/b/a Disco Fair, et al.
and Retail Clerks Union, Local No. 899,
Retail Clerks International Association,
AFL-CIO. Case 31-CA-519**

May 16, 1967

DECISION AND ORDER

BY MEMBERS BROWN, JENKINS, AND ZAGORIA

Upon a charge and amended charges filed by Retail Clerks Union, Local No. 899, Retail Clerks International Association, AFL-CIO, herein called the Union, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 31, issued a complaint dated October 28, 1966, against Red-More Corporation, d/b/a Disco Fair; Redcrest Company, d/b/a Disco Fair; Disco Fair Operating Company; Disco Drug Company; and Myro-Lin Corp., all referred to collectively herein as Disco Fair; and Dacs Inc.; Martin Josephson; S & N Camera Supplies; Jack Gaines; Mr. Chips Dry Cleaning; Spartan Furniture, Inc.; Disco Fair Garden Center; Eastside Oil Co., Inc.; Leased Department of Oxnard, Inc.; The Value Shop; Unishops, Inc.; W. Sherman, O. D. & G. Davis, O. D.; Gallenkamp Stores Co.; Art-Mar Enterprises; United Merchandising Corp.; Corvette Distributing Co.; Martin P. Connolly, Robert L. Brown; National Domestic Corp.; Leased Department of Larkspur, Inc.; Hartfield Stores, Inc.; Van Loon Bros.; and Oscar Cantu, herein called individually by name or collectively as licensees and/or lessees, alleging that Disco Fair and the named licensees and/or lessees had engaged in and were engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, amended charges, and the complaint and notice of hearing were duly served upon all Respondents and the Union.

With respect to the unfair labor practices, the complaint alleges in substance that on or about September 17, 1966, the Union was duly certified by the Board, as described more fully below, as the exclusive bargaining representative of Respondents' employees in the unit found appropriate by the Board and that, since on or about October 3, 1966, Respondents have refused to bargain with the Union as such exclusive bargaining representative, although requested by the Union to do so. On or about November 14, 1966, Respondents Disco Fair and Hartfield Stores filed separate answers, admitting in part, and denying in part, the allegations of the complaint, and requesting that the

complaint be dismissed. A similar answer was filed on or about November 22, 1966, by Respondent United Merchandising. On or about November 1 and 10, 1966, Respondents W. Sherman, O. D. & G. Davis, O. D., and Oscar Cantu, respectively, filed responses to the complaint which patently do not meet the requirements of Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, concerning answers to complaints. None of the other Respondents have filed any answers, or requested any extension of time for filing answers, as provided in Section 102.22 of the Board's Rules and Regulations.

On or about December 27, 1966, the General Counsel filed with the Board a motion for summary judgment, asserting, in view of admissions contained in the answers of Disco Fair, Hartfield Stores, and United Merchandising, respectively, as well as the failure of the other Respondents to file appropriate answers, that there are no issues of fact or law requiring a hearing, and praying the issuance of a Decision and Order finding the violations as alleged in the complaint.¹

On December 30, 1966, the Board issued an order transferring proceeding to the Board and a notice to show cause on or before January 16, 1967, why the motion for summary judgment should not be granted. Thereafter, on January 16, 1967, Respondents Disco Fair and Hartfield Stores jointly filed a statement in opposition to motion for summary judgment, and a response to notice to show cause.

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.

Upon the entire record in this case the Board makes the following:

Ruling on the Motion for Summary Judgment

In the opposition to the motion and the response to the notice to show cause, it is contended that the Board does not have the authority or jurisdiction to entertain or grant the motion because "the Board's Rules and Regulations require that all pretrial motions be filed with the Regional Director and referred to the Trial Examiner and do not permit the Board to rule directly on such motions." We reject this contention, for we have held that summary judgment motions may be entertained and granted by either a Trial Examiner or the Board, where, as here, the pleadings show that there is no genuine issue for trial.² Also, we reject as frivolous the

¹ On or about January 16, 1967, the General Counsel filed a motion to amend complaint and motion for summary judgment. This motion, which merely corrects the names of certain of the Respondents in accordance with the answers to the complaint, is hereby granted.

² *E-Z Davis Chevrolet*, 161 NLRB 1380. See also, *Herbert Harvey, Inc.*, 162 NLRB 890. *Collins & Atkman Corporation*, 160 NLRB 1750.

contention that the Board's issuance of a notice to show cause gives discovery rights to the General Counsel which are not available to other parties, and shifts the burden of proof from the General Counsel to Respondents.

The record before us shows that after a consolidated hearing, the Regional Director issued a Decision and Direction of Election,³ in which he found that Disco Fair and the other named Respondents in the instant complaint were joint employers and that all of their regular and part-time employees constituted an appropriate unit for collective-bargaining purposes. On or about July 8, 1966, Disco Fair filed a request for review of the Decision and Direction, contesting, as it had before the Regional Director, the joint-employer relationship and the appropriateness of the unit based thereon. On or about July 29, 1966, the Board denied the request for review as raising no substantial issues. In the election held on August 12, 1966, a majority of the employees in the unit voted for the Union. On or about August 19, 1966, Disco Fair, again contesting the appropriateness of the unit, filed objections to the election, and a motion for reconsideration of the Decision and Direction and stay of certification. In a Supplemental Decision issued on September 27, 1966, the Regional Director overruled the objections, denied the motion, and certified the Union. No request was made for review of the Supplemental Decision.

The answers filed herein expressly admit, at least on behalf of the answering Respondents, the complaint's jurisdictional and procedural allegations, all of the above-recited matters pertaining to the representation proceeding, and the refusal of the Union's postcertification request for bargaining.⁴ Such answers denied, however, that the certified unit is appropriate, and that the Union is the exclusive representative for employees in an appropriate unit, within the meaning of Section 9(a) of the Act.

In the response to the notice to show cause, it is urged that evidence will be offered as a defense at the hearing in the following respects:

1. That certain respondents have offered to bargain with the Union.
2. That the hearing officer in Cases Number 31-RC-210 and 31-RC-211 erred in not receiving certain evidence offered by the

employer; that such evidence was relevant and material to the issue of the appropriate unit; and that such error caused the Regional Director to issue a decision and direction of election directing an election among employees employed in a unit *not* appropriate for the purposes of collective bargaining. Upon making this showing, we shall offer in evidence in the unfair labor practice proceeding the evidence which the hearing officer in the representation case improperly excluded to the prejudice of respondents herein.

3. That the form license and lease agreements have been changed to clarify or delete the provisions relied upon by the Regional Director to support his finding, albeit an incorrect finding, that "Disco Fair is given substantial right of control over matters relating to the employees in the leased departments" and the further finding "that Disco Fair is in a position to influence the labor policies of all . . . licensees and lessees."

The first of these contentions, which apparently refers to nonanswering Respondents, we find to be legally insignificant since all of the answers filed herein expressly admit refusal of the Union's bargaining request. With respect to the second contention, which is raised for the first time on the instant notice to show cause, it is clear that the evidence in question is neither newly discovered nor previously unavailable, and it is well settled that a respondent may not relitigate in 8(a)(5) proceeding matters which were or could have been raised in a related representation proceeding.⁵ As for the third contention, assuming that the alleged changes in the agreements are new, they were not particularized, nor were copies thereof submitted in order to show their effect, if any, upon the prior finding in the representation proceeding of a joint-employer relationship.⁶

Accordingly, we find that no issue has been raised which is properly triable in the instant unfair labor practice proceeding. All material issues thus having been previously decided by the Board or admitted by the answers to the complaint, or stand admitted by the failure to controvert the averments of the General Counsel's motion, there are no matters requiring a hearing before the Trial Examiner. We shall, therefore, grant the motion for summary

³ *Red-More Corporation, d/b/a Disco Fair*, Cases 31-RC-210, 31-RC-211, issued June 28, 1966 (not published in NLRB volumes)

⁴ The contention by these Respondents that a hearing is required for proof of complaint allegations concerning nonanswering Respondents is without merit. The notice of hearing served upon *all* named Respondents expressly advised that, pursuant to Section 102.20 of the Board's Rules and Regulations, in the absence of an answer, all allegations in the complaint shall be deemed to be admitted to be true and may be so found by the Board.

⁵ *Pittsburgh Plate Glass Company v NLRB*, 313 U.S. 146. *Brush-Moore Newspaper, Inc., d/b/a The Portsmouth Times*, 161 NLRB 1620.

⁶ See, *Brush-Moore Newspaper, supra*, fn 5. Moreover, we note that a similar contention specifying in detail alleged changes and deletions in the form agreements, was rejected by the Board upon Disco Fair's request for review of the Regional Director's Decision and Direction of Election in the representation proceeding.

judgment. On the basis of the record before us, we make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENTS

Red-More Corporation, d/b/a Disco Fair, is now, and has been at all times material herein, a California corporation engaged in the ownership and operation of a retail department store located at Oxnard, California, herein called the Oxnard store.

Redcrest Company, d/b/a Disco Fair, is now, and has been at all times material herein, a California corporation engaged in the ownership and operation of a retail department store located at Goleta, California, herein called the Goleta store.

Disco Fair Operating Company, a California corporation, is now, and has been at all times material herein, a wholly owned subsidiary of Red-More. Pursuant to agreements with Red-More and Redcrest, it is the operating company at the retail level for the following departments at the respective stores: housewares, hardware, radio, records, automotive, paint, major appliances, carpet, candy, and stationery.

Pursuant to individual license agreements with Red-More, the following Employers operate departments, as indicated, at the Oxnard store:⁷ Dacs, Inc. (tire department); Martin Josephson (beauty shop); S & N Camera Supplies (camera department); U. S. Sewing Center, Inc. (domestics department); Gallenkamp Stores Co. (shoe department); Disco Drug Co. (drug department); Mr. Chips Dry Cleaning (drycleaning department); Disco Fair Garden Center (garden center); Eastside Oil Co., Inc. (gas station); Leased Department of Oxnard, Inc. (jewelry department); The Value Shop (ladies' department); Unishops, Inc. (men's department); W. Sherman, O. D. & G. Davis, O. D. (optometry); Spartan Furniture, Inc. (furniture department); United Merchandising (sporting goods department); and Jack Gaines (doughnut department).

Pursuant to individual lease agreements with Redcrest, the following Employers operate departments, as indicated, at the Goleta store: Dacs, Inc. (tire department); S & N Camera Supplies (camera department); Jack Gaines (doughnut department); Disco Drug Co. (drug department); Mr. Chips Dry Cleaning (drycleaning department); Spartan Furniture Inc. (furniture department); Disco

Fair Garden Center (garden center); Unishops, Inc. (men's shop); Gallenkamp Stores Co. (shoe department); United Merchandising (sporting goods department); Martin P. Connolly (beauty shop); National Domestic Corp. (linen department); Leased Department of Larkspur, Inc. (jewelry department); Hartfield Stores, Inc. (ladies' and children's department); W. Sherman, O. D. & G. Davis, O. D. (optometry); and Myro-Lin Corp. (gas station).

Pursuant to respective individual lease agreements with Redcrest, the barbershop at the Goleta store was operated by Robert L. Brown prior to September 15, 1966, and has been operated since that date by Oscar Cantu.

Pursuant to a lease agreement with Redcrest and a license agreement with Red-More, snackbars at both the Goleta and Oxnard stores are operated by Art-Mar Enterprises.⁸

Redcrest, Red-More, Disco Fair Operating, Disco Drugs, and Myro-Lin admit, and we find, that they annually make sales at the Oxnard and Goleta stores exceeding \$500,000 in value. They admit further, as does United Merchandising, annually causing the transportation to such stores, directly from points outside the State of California, of goods and supplies valued in excess of \$50,000. Although none of the other Respondents involved herein filed answers containing monetary data as to their operations, we have previously determined in the representation proceeding that Redcrest and Red-More are associated with them as joint employers. Accordingly, we find, as we did in the representation proceeding, that Redcrest and Red-More, and their named licensees and lessees, are engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Retail Clerks Union, Local No. 899, Retail Clerks International Association, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

1. The unit

At all times material herein, the following employees of the Respondents have constituted a unit appropriate for collective bargaining within the meaning of the Act:

the alleged change, the inclusion of Corvette's name in the complaint is harmless, for we shall not make Corvette subject to the bargaining order entered below. See *K-Mart, a Division of S S Kresge Company*, 162 NLRB 498 (with respect to Besco Enterprises, Inc.)

⁸ The complaint alleges, and the answers deny, that Van Loon Bros. is a cooperator of the snackbars. For reasons stated above in fn. 7, concerning the Corvette situation, we shall omit the name of Van Loon Bros. from the bargaining order.

⁷ The answer filed on behalf of Disco Fair Operating Company alleges that since August 26, 1966, the Oxnard stationery department has been operated by it, rather than by Corvette Distributing Company as set forth in the complaint. It does not appear that either the Board or the Charging Party was previously advised of this change, nor was any motion for clarification of the certified unit filed to delete Corvette's name from the list of licensees attached to the original Decision and Direction of Election. In any event, as the General Counsel does not controvert

All regular and part-time employees of the Employers' retail department stores in Oxnard and Goleta, California, operated under the name of "Disco Fair," including employees of licensees and lessees; excluding employees of Food Fair, Inc., confidential employees, professional employees, guards, and supervisors as defined in the Act.

2. The certification

On or about August 12, 1966, a majority of the employees in the unit described above, in a secret-ballot election conducted under the supervision of the Regional Director for Region 31, designated the Union as their representative for the purpose of collective bargaining, and, on or about September 27, 1966, the Board certified the Union as the exclusive bargaining representative of employees in said unit.

3. The request to bargain and the Respondents' refusal

Commencing on or about September 28, 1966, and continuing to date, the Union has requested and is requesting the Respondents to bargain collectively with it as the exclusive bargaining representative of all employees in the above-described unit. Commencing on or about October 3, 1966, and continuing to date, the Respondents refused and continue to refuse to bargain collectively with the Union as the exclusive bargaining representative of all employees in the said unit.

Accordingly, we find that the Union was duly certified by the Board as the collective-bargaining representative of the employees of the Respondents in the appropriate unit described above, and that the Union, at all times since September 27, 1966, has been and is now the exclusive bargaining representative of all the employees in the aforesaid unit, within the meaning of Section 9(a) of the Act. We further find that the Respondents have, since October 3, 1966, refused to bargain collectively with the Union as the exclusive bargaining representative of their employees in the appropriate unit, and that by such refusal, the Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The acts of the Respondents, set forth in section III, above, occurring in connection with their operations as described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the Respondents have engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that they cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

CONCLUSIONS OF LAW

1. Red-More Corporation, d/b/a Disco Fair; Redcrest Company, d/b/a Disco Fair; Disco Fair Operating Company; Disco Drug Company; Myro-Lin Corp.; Dacs, Inc.; Martin Josephson; S & N Camera Supplies; Jack Gaines; Mr. Chips Dry Cleaning; Spartan Furniture, Inc.; Disco Fair Garden Center; Eastside Oil Co., Inc.; Leased Department of Oxnard, Inc.; The Value Shop; Unishops, Inc.; W. Sherman, O. D. & G. Davis, O. D.; Gallenkamp Stores Co.; Art-Mar Enterprises; United Merchandising Corp.; Martin P. Connolly; National Domestic Corp.; Leased Department of Larkspur, Inc.; Hartfield Stores, Inc.; and Oscar Cantu, each is and Robert L. Brown, was, an employer within the meaning of Section 2(2) of the Act.

2. Retail Clerks Union, Local No. 899, Retail Clerks International Association, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All regular and part-time employees of the Employers' retail department stores in Oxnard and Goleta, California, operated under the name of Disco Fair, including employees of licensees and lessees; excluding employees of Food Fair, Inc., confidential employees, professional employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since September 27, 1966, the above-named labor organization has been and is now the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about October 3, 1966, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of the Respondents in the aforesaid unit, the Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

6. By the aforesaid refusal to bargain, the Respondents have interfered with, restrained, and coerced, and are interfering with, restraining, and coercing, their employees in the exercise of the rights guaranteed to them in Section 7 of the Act,

and has thereby engaged in and are engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondents Red-More Corporation, d/b/a Disco Fair; Redcrest Company d/b/a Disco Fair; Disco Fair Operating Company, Disco Drug Company, Myro-Lin Corp.; Dacs, Inc.; Martin Josephson; S & N Camera Supplies; Jack Gaines; Mr. Chips Dry Cleaning; Spartan Furniture, Inc.; Disco Fair Garden Center; Eastside Oil Co., Inc.; Leased Department of Oxnard, Inc.; The Value Shop; Unishops, Inc.; W. Sherman, O. D. & G. Davis, O. D.; Gallenkamp Stores Co.; Art-Mar Enterprises; United Merchandising Corp.; Martin P. Connolly; National Domestic Corp.; Leased Department of Larkspur, Inc.; Hartfield Stores, Inc.; and Oscar Cantu; their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Retail Clerks Union, Local No. 899, Retail Clerks International Association, AFL-CIO, as the exclusive bargaining representative of their employees in the following appropriate unit:

All regular and part-time employees of the Respondents' retail department stores in Oxnard and Goleta, California, operated under the name of "Disco Fair," including employees of licensees and lessees; excluding employees of Food Fair, Inc., confidential employees, professional employees, guards, and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the purposes of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at their places of business at the stores operated under the name of Disco Fair at Oxnard and/or Goleta, California, copies of the attached notice marked "Appendix."⁹ Copies of said notice, to be furnished by the Regional Director for Region 31, after being duly signed by the Respondents'

representative, shall be posted by the Respondents immediately upon receipt thereof, and be maintained by them for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 31, in writing, within 10 days from the date of this Decision and Order, what steps have been taken to comply herewith.

⁹ In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "a Decision and Order" the words "a Decree of the United States Court of Appeals Enforcing an Order"

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order 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 refuse to bargain collectively with Retail Clerks Union, Local No. 899, Retail Clerks International Association, AFL-CIO, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union as the exclusive representative of all employees in the bargaining unit described below with respect to wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

The bargaining unit is:

All regular and part-time employees of the Respondents' retail department stores in Oxnard and Goleta, California, operated under the name of "Disco Fair," including employees of licensees and lessee; excluding employees of Food Fair, Inc., confidential employees, professional employees, guards, and supervisors as defined in the Act.

RED-MORE
CORPORATION, D/B/A
DISCO FAIR, ET AL.
(Employer)

Dated _____ By _____
(Representative) (Title)

Employees may communicate directly with the Board's Regional Office, 10th Floor, Bartlett Building, 215 West Seventh Street, Los Angeles, California 90014, Telephone 688-5801, if they have any questions concerning this notice or compliance with its provisions.

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.