

Esgro Valley, Inc. and Retail Clerks Union, Local 770, affiliated with Retail Clerks International Association, AFL-CIO. Cases 31-RM-80, 31-RM-81, and 31-RM-82

January 10, 1968

DECISION AND DIRECTION OF
ELECTIONS

BY CHAIRMAN McCULLOCH AND MEMBERS
FANNING AND ZAGORIA

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Max Steinfeld of the National Labor Relations Board. Following the hearing and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended, and by direction of the Regional Director for Region 31, this case was transferred to the National Labor Relations Board for decision. A brief was timely filed by the Union.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error.¹ They are hereby affirmed.

Upon the entire record in this case, the Board finds:

1. The parties stipulated, and we find, that the Employer is engaged in commerce within the meaning of the Act, and that 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. Questions affecting commerce exist 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.²

4. The Petitioner seeks elections in separate units of its employees located at certain White Front stores. The Union contends that the units

sought are inappropriate because the Employer and White Front are joint employers and only storewide units are appropriate.

White Front is a discount department store chain engaged in retail selling. The Employer-Petitioner is a separate corporation engaged in the retail sale of jewelry, cameras, photographic supplies, and related products at various locations in the White Front stores. The Employer's retail business is conducted on a leased-department basis at the White Front stores, and the relationship between White Front and the Employer is governed by a license agreement between them.

On December 16, 1964, the National Labor Relations Board issued a Decision and Direction of Elections in *Esgro Anaheim, Inc.*, 150 NLRB 401. In that case, as here, the Union urged that White Front and the Employer were joint employers, and considerable evidence as to the relationship between White Front and the Employer was introduced into that record. According to the stipulation of the parties, the operating conditions and the license agreement between the Employer and White Front have not changed since 1964, and the record of that case has been incorporated herein. Although the Board held that White Front was not a joint employer of the Employer's employees in *Esgro Anaheim Inc.*, *supra*, the Union contends that a joint employer finding is required under cases decided subsequent to *Esgro*.³ The Union further contends that the storewide unit is the only appropriate unit under a joint employer finding.

We need not decide whether these recent cases might warrant reexamination of the relationship between the Employer and White Front, since this is not a case where a combined unit is initially sought. For even if the existence of a joint employer relationship might otherwise be found appropriate, it would not necessarily follow that the storewide unit including all leased and licensed department employees would be the *only* appropriate unit.⁴ Since no Union seeks an election in the storewide unit, the question is, simply, whether the smaller unit composed of the Employer's employees is *an* appropriate unit. We find that it is.

¹ The Union argues that the Employer did not have reasonable grounds for believing that it lacked majority status as required by *United States Gypsum Co.*, 157 NLRB 652. At the hearing the Union attempted to show the Employer's attitude with regard to the negotiations between the parties. The Hearing Officer refused to permit the Union to cross-examine the Employer as to this matter, and referred to the Board the Union's request that administrative notice be taken of certain letters purporting to show the Employer's attitude. These letters were related to an unfair labor practice charge which was dismissed without a complaint having issued. As we have previously held, the requirement that an employer must demonstrate by objective considerations that it has some reasonable grounds for believing that a Union has lost its majority status since its certification is to be administratively determined and is not subject to litigation. *United States Gypsum*, 161 NLRB 601. Accordingly, since the Regional Director has administratively determined that the requisit *prima facie* showing has been made herein, we sustain the Hearing Officer's refusal to allow cross-examination into this matter, and we will not, in this

proceeding, take notice of letters purporting to show the attitude of the Employer.

² Though the Union contends, as will be discussed hereinafter, that the recognized units which the Employer seeks are inappropriate, it does not contend that it does not in fact represent employees in these units. Cf. *Franz Food Products of Green Forest, Inc.*, 137 NLRB 340

³ *Jewel Tea Co., et al.*, 162 NLRB 508; *K-Mart Division of S. S. Kresge Company*, 161 NLRB 1127; *Thriftown, Inc., d/b/a Value Village, et al.*, 161 NLRB 603; *K-Mart, a Division of S. S. Kresge Company, et al.*, 159 NLRB 256

⁴ *Bargain Town U.S.A. of Puerto Rico, Inc.*, 162 NLRB 1145. See also *United Stores of America and Collins Mart, Inc.*, 138 NLRB 383; *Frostco Super Save Stores, Inc.*, 138 NLRB 125; *Normandy Square Food Basket, Inc.*, 163 NLRB 369. *N.L.R.B. v. The Puritan Sportswear Corp.*, 385 F.2d 142 (C.A. 3, 1967).

The Employer is a corporate entity unrelated to White Front except contractually. The Employer carries on within the framework of the license agreement an individual business under its own immediate supervision and control. The Employer has the primary responsibility for the hire, discharge, wages, fringe benefits, and supervision of its own employees. The record further reveals that the Employer's business areas are set off from the rest of the departments in the White Front stores by partitions, that these separate areas have their own cash registers, that the employees of the Employer do not use White Front's timeclocks, and that there is no interchange of employees between the Employer and White Front. In addition to the foregoing indicia of separateness, we rely also on the fact that there is a prior history of bargaining with regard to the requested units.⁵

We find, therefore, that the following employees constitute separate units appropriate for the pur-

poses of collective bargaining within the meaning of Section 9(b) of the Act:

(1) All retail sales employees employed at Esgro Valley's facilities at 16040 Sherman Way, Van Nuys, California, excluding all other employees, guards, and supervisors as defined in the Act.

(2) All retail sales employees employed at Esgro Valley's facilities at 9725 Laurel Canyon Boulevard, Pacoima, California, excluding all other employees, guards, and supervisors as defined in the Act.

(3) All retail sales employees employed at Esgro Valley's facilities at 21300 Roscoe Boulevard, Canoga Park, California, excluding all other employees, guards, and supervisors as defined in the Act.

[Direction of Elections⁶ omitted from publication.]

⁵ Besides collective-bargaining agreements resulting from the Board-directed elections in 1964, an earlier agreement, covering the Van Nuys unit here involved, was entered into by the Union's predecessor and the Employer in 1960. See *Esgro, Inc. and Esgro Valley Inc.*, 135 NLRB 285, 293, and *Esgro Anaheim, Inc.*, *supra*. We also note, in this regard, that the employees of other lessee-employers in the White Front stores have been held to constitute appropriate separate bargaining units and elections have been directed in these units *Bab-Rand Company*, 147 NLRB 247, *New Fashion Cleaners, Inc.*, 152 NLRB 284; *Triumph Sales, Inc.*, 154 NLRB 916

⁶ An election eligibility list, containing the names and addresses of all the eligible voters in each of the respective units in which an election is hereby directed, must be filed by the Employer with the Regional Director of Region 31 within 7 days after the date of this Decision and Direction of Elections. The Regional Director shall make the lists available to all parties to the elections. No extension of time to file these lists shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the elections whenever proper objections are filed. *Excelsior Underwear Inc.*, 156 NLRB 1236